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2011]

THE UNITED STATES AND INTERNATIONAL LAW:  
THE UNITED NATIONS FINDS A HOME

MARK WESTON JANIS\*

**I**N some narratives, the United States has fallen from grace in international law. The tale is that we Americans used to be strongly committed to international law and international organization and were generally compliant with international legal rules and decisions. Over time, however, this commitment and that compliance weakened, and today the United States is often non-committed to and non-compliant with international law. This brief Essay reviews an early episode in the relationship between the United States and the United Nations, finding a home for the United Nations, to test the fallen-from-grace narrative.

The traditional narrative is well told by Professor Murphy. His fine book, *The United States and the Rule of Law in International Affairs*,<sup>1</sup> strives to reach an understanding of why the United States has deviated from the rule of law concept in international affairs.<sup>2</sup> A summary of his story might go as follows: At the close of World War II, when it was truly the sole superpower, the United States engaged in strenuous efforts to create an international order based on legal principles.<sup>3</sup> With the passage of time, however, the United States gradually began to lose the control it had over the international legal process.<sup>4</sup> Nowadays the United States has found it increasingly difficult to adhere to the rule of law in international affairs.<sup>5</sup> Indeed, foreign policy considerations may counsel against the United States' compliance with international law.<sup>6</sup>

This Essay suggests that this narrative, and others like it,<sup>7</sup> put the eden of America's fall from international law grace a little too late. I argue elsewhere<sup>8</sup> that the high-point for American enthusiasm for international

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1. JOHN F. MURPHY, *THE UNITED STATES AND THE RULE OF LAW IN INTERNATIONAL AFFAIRS* (2004).

2. *See id.* at 5.

3. *See id.* at 2.

4. *See id.* at 3.

5. *See id.* at 4.

6. *See id.* at 8.

7. *See, e.g.,* Leila Nadya Sadat, *The Nuremberg Paradox*, 58 AM. J. COMP. L. 151, 153 (2010) (asking why "American 'ownership' of the Nuremberg legacy has resulted in only tepid support for the Nuremberg principles by successive U.S. administrations, particularly as regards U.S. conduct").

8. *See* MARK WESTON JANIS, *AMERICA AND THE LAW OF NATIONS 1776-1939* (2010).

law and organization was 1872-1919, a period book-ended by the highly successful *Alabama* arbitration against the United Kingdom and the disaster of Woodrow Wilson's failure to persuade either the U.S. Senate or the American people to embrace his concept of a League of Nations.<sup>9</sup> As early as the elections of 1920, international law and the cause of international organization had become controversial issues of American party politics, usually dividing, no longer usually uniting, Democrats and Republicans.<sup>10</sup> The now-forgotten debate in 1945 and 1946 about siting the United Nations is a good illustration of the ambiguities in the relationship between the United States and international law and organization at the alleged high tide of U.S. support at the close of World War II.

During the inter-war years, American public opinion remained steadfastly against participation in the League. Even when a Democratic administration, Roosevelt's in 1933, replaced those of Republican presidents Harding, Coolidge, and Hoover (1921-1933), the country was hardly ready to join. In 1937, only twenty-six percent of all Americans polled answered "yes" to the question: "Would you like to see the United States join the League of Nations?"<sup>11</sup> The course of World War II, however, transformed American attitudes toward international organization. By March 1945, seventy-three percent of Americans polled favored joining the United Nations, although the percentage slipped to fifty if U.S. troops were to be committed by the international institution.<sup>12</sup>

To some, the location of the United Nations in New York City was always part of the plan of the victorious World War II allies. Paul Kennedy, for example, writes:

The Great Powers would usually pay serious attention to these [U.N. policy] agendas only when they seemed to affect their national interests and prestige. It is significant that many of the soft [U.N.] agencies have their headquarters in Geneva, Vienna, Paris, Rome, Tokyo, and Nairobi, whereas the Bretton Woods institutions [the World Bank and the International Monetary Fund] were deliberately located in Washington, D.C., and the UN headquarters placed firmly in New York City.<sup>13</sup>

However, it was by no means certain from the outset that the successor to the League would be sited or welcomed in New York or, indeed, anywhere in the United States. Franklin Roosevelt before his death in April 1945 was one of the first to be strongly committed to a U.S. loca-

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9. *Id.* at 131-75.

10. *Id.* at 194-220.

11. WILLIAM A. SCOTT & STEPHEN B. WHITNEY, *THE UNITED STATES AND THE UNITED NATIONS: THE PUBLIC VIEW 1945-1955*, at 11 (1958).

12. *See id.* at 14.

13. PAUL KENNEDY, *THE PARLIAMENT OF MAN: THE PAST, PRESENT AND FUTURE OF THE UNITED NATIONS* 144 (2006).

tion.<sup>14</sup> Roosevelt steadfastly opposed putting the United Nations in Geneva, the choice of many Europeans. He hoped to differentiate the new institution from the failed League of Nations and visualized that only the U.N. Secretariat would have a fixed home, perhaps in the Empire State Building or at the Pentagon. The General Assembly would meet from time to time on different continents. The Security Council might have two or three sites. Roosevelt suggested remote locations: the Azores, Hawaii, and the Black Hills of South Dakota, “four hundred miles from civilization in every direction [with] two good hotels [and] filled with well-stocked trout streams.”<sup>15</sup>

Formally, the United Nations was given a good deal of legal discretion to decide the home for its headquarters. It had been much different for its predecessor. The League of Nations had been obliged by Article 7 of its Covenant:

#### ARTICLE 7

1. The Seat of the League is established at Geneva.
2. The Council may at any time decide that the Seat of the League shall be established elsewhere.<sup>16</sup>

Instead, the U.N. Charter merely refers in its Article 28 to the “seat of the Organization” when defining the operations of the Security Council and nowhere says where the seat shall be or who shall determine it:

#### ARTICLE 28

1. The Security Council shall be so organized as to be able to function continuously. Each member of the Security Council shall for this purpose be represented at all times at the seat of the Organization.
2. The Security Council shall hold periodic meetings at which each of its members may, if it so desires, be represented by a member of the government or by some other specially designated representative.
3. The Security Council may hold meetings at such places other than the seat of the Organization as in its judgment will best facilitate its work.<sup>17</sup>

As an Australian delegate put it at an early session of the Security Council: “Under Article 28, we know that even the Security Council could

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14. See ROBERT C. HILDERBRAND, *DUMBARTON OAKS: THE ORIGINS OF THE UNITED NATIONS AND THE SEARCH FOR POSTWAR SECURITY* 106 (1990).

15. *Id.*

16. HANS Kelsen, *THE LAW OF THE UNITED NATIONS* 348 (1950).

17. U.N. Charter art. 28, paras. 1-3.

go to Greece and hold meetings.”<sup>18</sup> The Austrian legal philosopher, Hans Kelsen, proposed making “the seat of the League completely independent from any government other than that of the League itself, that is to say, it would be advisable to create for the seat of the League a territory of approximately the size and of about the same legal status as that of the state of the Vatican City.”<sup>19</sup>

In practice, various early U.N. bodies dealt with the headquarters's siting question.<sup>20</sup> On October 3, 1945, though the U.N. Executive Committee voted nine-to-three, with the United States and Canada abstaining, to make the United States the permanent home of the United Nations, there was considerable anti-U.S. sentiment.<sup>21</sup> The “French and British delegates made it clear that they would carry the fight for a European center for the UNO headquarters into the Preparatory Commission’s conference here in November and, if necessary, into the first meeting of the General Assembly in December, when the final decision will be taken.”<sup>22</sup> The British were especially opposed to a U.S. site:

Mr. Noel-Baker [of the United Kingdom] defended the League vigorously, asserting that it was not the League but the nations of the League that had failed. He recalled Munich and declared that the events leading to the war had occurred outside the League.

He agreed with M. Massigli [of France] about the desirability that the permanent headquarters should not be with the Big Five, argued that the United States was too distant from the rest of the world, defended Europe as the mother of democracy, said that most of the world’s major problems would be in Europe and concluded with the observation that most European countries would be short of dollars for several years and would be faced with a problem to pay their expenses and contributions in dollars.<sup>23</sup>

C.L. Sulzberger, writing in the *New York Times* in October 1945, reported that some European states, including the United Kingdom, continued to prefer a European home, preferably Geneva, for the United Nations.<sup>24</sup> Interestingly, the Swiss, however, were reluctant to house the

18. Colonel Hodgson, *Discussion in the Security Council, 27 June-25 July 1947*, in *CASES ON UNITED NATIONS LAW* 330, 337 (Louis Sohn ed., 1967).

19. Hans Kelsen, *The Old and the New League: The Covenant and the Dumbarton Oaks Proposals*, 39 *AM. J. INT’L L.* 45, 81 (1945).

20. See KELSEN, *supra* note 16, at 348-50.

21. See Sydney Gruson, *UNO Vote Favors San Francisco; Britain Holds Out for Geneva Seat*, *N.Y. TIMES*, Oct. 4, 1945, at 1.

22. *Id.*

23. *Id.* at 2.

24. See C.L. Sulzberger, *Move for the UNO Seat in New York Area*, *N.Y. TIMES*, Oct. 15, 1945, at 8.

United Nations, fearing that an international organization more powerful than the League would threaten Swiss neutrality.<sup>25</sup> “[T]here was some talk to establish an ‘internationalized area’ around Geneva, by the cession of territory by Switzerland and France,” but that came to naught.<sup>26</sup>

On the other side of the pond, there were more than twenty American locations under consideration ranging from Miami Beach to the Black Hills of South Dakota. The leading U.S. candidate was San Francisco, which many liked for its “pioneering, hopeful outlook on life.”<sup>27</sup> The New York region was at first a “dark horse”; the United Kingdom, France, the Netherlands, and other European nations favored a European home, but thought that a site on the U.S. East Coast would be at least a compromise, a shorter distance to Europe.<sup>28</sup> The Russians, too, were willing to accept an American location, though their first preferences were Vienna and Prague, European cities they then occupied.<sup>29</sup> Vienna was also favored by the international lawyer Josef Kunz, in the pages of the *American Journal of International Law*, where in 1945 he argued that that city would not only offer Austria economic and political benefits but that Vienna would “offer the qualities which we expect from the new organization: love, not hatred; tolerance and humanism, not fanaticism; universalism, not nationalism; culture, tradition, beauty, the triumph of the spirit over matter.”<sup>30</sup>

On December 15, 1945, the Preparatory Commission of the United Nations narrowly voted to put the new U.N. headquarters in the United States. The vote was thirty in favor, fourteen against, and six abstentions, just above the required two-thirds majority.<sup>31</sup> The tally went:

For the United States—Argentina, Australia, Bolivia, Brazil, White Russia, Chile, China, Cuba, Czechoslovakia, Dominican Republic, Egypt, El Salvador, Guatemala, Haiti, Honduras, India, Iran, Mexico, Nicaragua, Panama, Paraguay, Peru, Philippines, Poland, Soviet Union, Turkey, the Ukraine, Uruguay, Venezuela and Yugoslavia. Total, thirty.

Against—Belgium, Canada, Denmark, France, Greece, Iraq, Lebanon, Liberia, Luxembourg, the Netherlands, Norway, Saudi Arabia, South Africa, Britain. Total, fourteen.

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25. See GEOFF SIMONS, *THE UNITED NATIONS: A CHRONOLOGY OF CONFLICT* 47 (1994); Josef L. Kunz, Editorial Comment, *Vienna as Headquarters of the New League*, 39 AM. J. INT’L L. 309, 309 (1945).

26. Josef L. Kunz, *Privileges and Immunities of International Organizations*, 41 AM. J. INT’L L. 828, 847 (1947).

27. Sulzberger, *supra* note 24, at 8.

28. See *id.*

29. See James B. Reston, *Russians Accept Locating UNO Here*, N.Y. TIMES, Sept. 25, 1945, at 10.

30. Kunz, *supra* note 26, at 314.

31. Sydney Gruson, *UNO Home in U.S. Voted; Specific Site Up Tomorrow*, N.Y. TIMES, Dec. 16, 1945, at 1.

Abstentions—Colombia, Ecuador, Ethiopia, New Zealand, Syria,  
United States. Total, six.<sup>32</sup>

It was reported at the time of the vote that “Boston and San Francisco [were] the leading candidates.”<sup>33</sup> Adlai Stevenson of Illinois, the grandson of a U.S. Vice President and later twice the Democratic presidential nominee, was the deputy and effective leader of the U.S. delegation.<sup>34</sup> Although the United States was officially neutral, Stevenson served as an advisor to Chicagoans who sought to site the United Nations in the Windy City.<sup>35</sup>

On December 22, 1945, the U.N. Preparatory Commission, pressured by the British and the Russians, voted to recommend that San Francisco be eliminated as a possible site and that the search be restricted to the U.S. East Coast.<sup>36</sup> On January 5, 1946, an Inspection Group began a month-long examination of fourteen possible localities on the East Coast.<sup>37</sup> These were in five states: Massachusetts, Rhode Island, Connecticut, New York, and New Jersey. Some of the ultimately rejected localities included Boston’s North Shore, Newport in Rhode Island, Ridgefield in Connecticut, Tuxedo Park in New York, and Princeton, New Jersey.<sup>38</sup> Notably New York City was not even on the list of fourteen.<sup>39</sup>

By February 1946, the New York City suburbs surged ahead in the contest, becoming “a strong favorite” for at least the U.N.’s interim home.<sup>40</sup> The leading contender was the North Stamford-Greenwich region in Connecticut. A site about forty or fifty square miles was mooted with a high estimated cost of \$20 million to \$70 million.<sup>41</sup>

However, at least three groups in early 1946 were opposed to the New York City region. Some nations, led by France and Belgium, feared that the New York City area was too expensive. Others like “[t]he Arab bloc want[ed] to get as far from New York as possible because of Jewish pressure on the Palestine issue[, while] Australia and Bolivia still hoped to get a site in San Francisco.”<sup>42</sup> Moreover, some key Americans, including Senator Arthur H. Vandenberg of Michigan, sought not only to find a less costly locale, but also one that would put the United Nations “closer to the

32. *Id.* at 26.

33. *Id.*

34. See STANLEY MEISLER, *UNITED NATIONS: THE FIRST FIFTY YEARS* 26 (1995).

35. See *id.* at 27.

36. See Sydney Gruson, *Choice of UNO Site Narrowed to East*, N.Y. TIMES, Dec. 23, 1945, at 1.

37. See Charles B. Hitchcock, *Westchester-Fairfield: Proposed Site for the Permanent Seat of the United Nations*, 36 GEOGRAPHICAL REV. 351, 351-52 (1946).

38. See *id.* at 353.

39. See *id.*

40. Sydney Gruson, *UNO Site Area Cut but Backers Hold Choice Will Stand*, N.Y. TIMES, Feb. 9, 1946, at 1.

41. See *id.*

42. *Id.* at 4.

realities of American town life.”<sup>43</sup> A Syrian delegate had a somewhat similar objection to New York, preferring a place “nearer to God, nearer to justice, if we want to maintain peace and justice in the world.”<sup>44</sup> Australia and Bolivia offered to drop their opposition to the New York area as a permanent site for the United Nations if it were agreed that San Francisco would be the United Nation’s temporary home.<sup>45</sup>

Meanwhile, Boston had fallen out of favor. The Soviet Union opposed any site in Massachusetts. The U.S.S.R. delegate on the U.N. site committee complained about a speech in Boston given by Massachusetts Supreme Court Judge John E. Swift that was perceived as hostile to the United Nations. According to the Russian delegate, no one present at the speech including the Governor of Massachusetts, the Mayor of Boston, and U.S. Senator David Walsh, objected. “[I]n view of this political atmosphere and attitude toward the United Nations among those responsible 1,500 persons of Massachusetts, we could not in any case consider any part of the state of Massachusetts as a possible site for the capital of the United Nations!”<sup>46</sup>

The focus now shifted to choosing a specific location in the New York area. At first it still seemed that the most likely place would be in the suburbs to the north and east of New York City. Possible sites were partly in Westchester County, New York and partly in Fairfield County, Connecticut.<sup>47</sup> However, there were complaints in Westchester County that the towns had not been properly consulted. “[P]rotest groups merged into a United Westchester Citizens Committee to Save Our Towns.”<sup>48</sup> And in Greenwich, Connecticut, the Town Moderator, Prescott Bush, the father of one future U.S. President and the grandfather of another, needed to be consulted about the proposals.<sup>49</sup> Though Prescott Bush thought of himself as an internationalist, he “feared that an international [U.N.] city would destroy the character of Greenwich” and “leaked news of the United Nations’ plans in town.”<sup>50</sup>

The first meeting of the U.N. General Assembly was held in London between January 10 and February 14, 1946.<sup>51</sup> “The debate on both the permanent and temporary headquarters brought to the fore once more the issues vigorously debated in the Preparatory Commission, and had latent in it all the feeling of the arguments over European as against United

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43. *Id.*

44. *Id.*

45. *See Australian Offers Swap on UNO Sites*, N.Y. TIMES, Feb. 13, 1946, at 18.

46. *Russian Bars UNO in Massachusetts*, N.Y. TIMES, Feb. 5, 1946, at 4.

47. *See UNO Vote Dropped by Westchester*, N.Y. TIMES, Feb. 19, 1946, at 4.

48. MEISLER, *supra* note 34, at 34.

49. *See UNO Vote Dropped by Westchester*, *supra* note 47, at 4.

50. Michael Powell, *How Connecticut Turned U.N.’s Sights to New York; Greenwich Opponents Spearheaded Campaign*, WASH. POST, Oct. 26, 2003, at A3.

51. *See* Walter H.C. Laves & Francis O. Wilcox, *The First Meeting of the General Assembly of the United Nations*, 40 AM. J. INT’L L. 346, 372 (1946).



States headquarters, and over San Francisco as against the East Coast.”<sup>52</sup> Adding to the emotional arguments were concerns about both the costs of a Connecticut site and the probable hostility of local Connecticut residents.<sup>53</sup> Nevertheless, on February 14, 1946, the U.N. General Assembly resolved:

(a) The permanent headquarters of the United Nations shall be established in Westchester (New York) and/or Fairfield (Conn.) counties, i.e. near to New York City.

(b) A Headquarters Commission shall proceed as soon as possible to the region mentioned in (a) above, with a view to carrying out an exhaustive study thereof and making recommendations to the General Assembly at the second part of its first session regarding the exact location to be selected within the aforementioned general region.

(c) The Headquarters Commission shall draw up plans based on the assumption that the United Nations will acquire approximately:

- (i) 2 SQUARE MILES
- (ii) 5 SQUARE MILES
- (iii) 10 SQUARE MILES
- (iv) 20 SQUARE MILES
- (v) 40 SQUARE MILES

with details in each case of the approximate cost of acquiring the land and buildings within these areas.

(d) The Headquarters Commission shall ascertain what measures the federal, state and county authorities in the United States of America are prepared to take in order to control development in the territory adjacent to the zone.

(e) On the basis of the information thus provided the General Assembly at the second part of its first session shall make a final decision as to:

- (i) The exact area required;
- (ii) The exact location of the permanent headquarters within the aforementioned Westchester-Fairfield region.

(f) This resolution does not imply any financial commitments of the United Nations (other than the expenses of the Headquarters Commission) and does not impose any financial obligations on its Members, and the General Assembly remains free to decide these questions at the second part of its first ses-

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52. *Id.*

53. *See id.* at 372-73.

sion according to Article 17, paragraphs 1 and 2, and Article 18, paragraph 2, of the Charter.<sup>54</sup>

However, Greenwich proved hostile to the U.N. proposal. A Greenwich town exhibit decades later recorded some of the tactics of opposition:

There were public meetings and petitions and a dirty trick or two. Cole [a Greenwich resident] boasted years later of hiring two men to pretend they were Syrians. Each man donned a fez and walked through downtown Greenwich with surveyor tools, chattering away in pig Latin and spooking the shopkeepers.

“The anti-U.N. folks raised a ton of money,” Udain [a reporter for the *Greenwich Times*] recalled, “and they began spreading rumors that camels would walk down the streets.”

There was uglier stuff, too. This was a WASP enclave, and many whispered of Jews and Russians taking over downtown Greenwich.<sup>55</sup>

On March 2, 1946, by a vote of 5,505 to 2,019, the citizens of Greenwich rejected the idea of putting the permanent headquarters of the United Nations by the town.<sup>56</sup> The referendum immediately discouraged U.N. officials who did not want to start “their organization on ‘the wrong foot’ by planting it in an atmosphere of ‘Greenwich and Elm,’ the town’s square.”<sup>57</sup> A leader of the opposition to a U.N. site in Greenwich said: “The people of Greenwich have clearly and unmistakably registered their belief that the UNO should not destroy one community in order to build another on its ruins but should select a site which will not cause unnecessary human suffering and wasteful expense.”<sup>58</sup> There were complaints that the issue had become one of party politics with Democrats favoring a Greenwich home for the United Nations and Republicans opposing. Whatever the party politics, local supporters of the Greenwich site found little official help from the State Department. “No one at State wanted to tangle with this [Greenwich] nest of powerful opponents.”<sup>59</sup>

American hostility to a U.S. site for the United Nations was reinforced by continuing opposition from others. Even at this relatively late date in the headquarters negotiations, there were foreign complaints about the United States. Christopher Hollis, a member of the Irish Parliament, ar-

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54. G.A. Res.25 (I), U.N. GAOR, 1st Sess., U.N. Doc. A/PV.33, at 37 (Feb. 14, 1946).

55. Powell, *supra* note 50, at A3.

56. See Morris L. Kaplan, *Greenwich Opposes Site for UNO by Vote of 2 1/2-1*, N.Y. TIMES, Mar. 3, 1946, at 1.

57. *Id.*

58. *Id.* at 31 (internal quotation marks omitted).

59. Powell, *supra* note 50, at A3.

gued that if the new United Nations was to “meet with better fortune than [the League of Nations], if its life should prove to be a reality, it is around Vienna that it should be built.”<sup>60</sup> Hollis dismissed siting the U.N. headquarters in the United States because “[t]he world’s danger is clearly that it split into two blocs—an American bloc and a Russian bloc.”<sup>61</sup> Accordingly, Hollis argued that the U.N. headquarters “must be somewhere in the no-man’s land between Russian Europe and Western Europe.”<sup>62</sup> Geneva was cursed with the tragic history of the League and saddled by Switzerland’s “obstinate tradition of neutrality.”<sup>63</sup> So, “[w]here else but in Vienna?”<sup>64</sup>

Finally, all debate closed on December 12, 1946, when the U.N. Headquarters Committee voted thirty-three to seven, with six abstentions, to approve “a United States resolution calling upon the General Assembly to accept the \$8,500,000 gift tract offered by Mr. Rockefeller as the site of a “skyscraper capital” of six blocks on Manhattan along the East River,<sup>65</sup> a purchase of a “run-down maze of slum dwellings and slaughter houses.”<sup>66</sup> The seven negative votes were cast by Australia, Egypt, India, Iraq, Lebanon, Saudi Arabia, and Syria.<sup>67</sup> The abstentions were Columbia, the Dominican Republic, France, Iran, Panama, and Peru.<sup>68</sup>

John D. Rockefeller, Jr., wrote: “If this property can be useful to you in meeting the great responsibilities entrusted to you by the peoples of the world, it will be a source of infinite satisfaction to me and my family.”<sup>69</sup> It seemed that Rockefeller’s Manhattan gift was immediately appreciated by the United Nations:

The delegates who had been hunting for more than a year and visiting cities from coast to coast looking for a permanent home were convinced within a matter of hours after Mr. Rockefeller made his offer that the riverside tract was the sort of ‘dream capital’ they had been hoping to attain. The late night meeting, therefore, was more of a ‘show’ than anything else.

It seemed almost incredible, after the long, wearying months of confusing changes in the site picture and persistent ‘stand-outs’ among member nations, that the final decision should be reached so easily and without rancor.<sup>70</sup>

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60. Christopher Hollis, *Vienna and the United Nations*, 35 *STUD.* 439, 442 (1946).

61. *Id.* at 441.

62. *Id.*

63. *Id.*

64. *Id.*

65. George Barrett, *City Tract Chosen*, *N.Y. TIMES*, Dec. 13, 1946, at 1.

66. SIMONS, *supra* note 25, at 49.

67. *See* Barrett, *supra* note 65, at 1.

68. *See id.*

69. SIMONS, *supra* note 25, at 49.

70. Barrett, *supra* note 65, at 4.

Another perspective is from a commentator more than fifty years later:

So, in the end, Greenwich beat back the United Nations and not incidentally established the Olde New England aesthetic still beloved by its millionaires. Turtle Bay got a soaring Le Corbusier tower and a collection of good French restaurants.<sup>71</sup>

On June 26, 1947, the United Nations and the United States agreed “to establish the seat of the United Nations in the City of New York.”<sup>72</sup> The agreement provided for a U.N. “headquarters district” consisting of:

(a) the premises bounded on the East by the westerly side of Franklin D. Roosevelt Drive, on the West by the easterly side of First Avenue, on the North by the southerly side of East Forty-Eighth Street, and on the South by the northerly side of East Forty-Second Street, all as proposed to be widened, in the Borough of Manhattan, City and State of New York, and

(b) an easement over Franklin D. Roosevelt Drive, above a lower limiting plane to be fixed for the construction and maintenance of an esplanade, together with the structures thereon and foundations and columns to support the same in locations below such limiting plane, the entire area to be more definitely defined by supplemental agreement between the United Nations and the United States of America.<sup>73</sup>

American concerns about a U.S. home for the U.N. headquarters did not abate even after the decision to site the United Nations in New York City. An American commentator raised “numerous far-reaching questions” about the decision, asking, for example, if there would be adequate personal security for foreigners: “[d]issentient elements and propaganda groups thrive in the mixed population of New York City.”<sup>74</sup> Moreover, there were U.S. national security concerns given that “the espionage activities centered in the embassies of allegedly friendly governments [is] a sample of the modern abuse of diplomatic hospitality.”<sup>75</sup> Indeed, when the House of Representatives, along with the Senate, passed a Joint Resolution authorizing the President to bring the Headquarters Agreement into force, the House included language drafted by its Foreign Affairs Committee, the so-called “Security Reservation”:

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71. Powell, *supra* note 50, at A3.

72. Agreement Between the United States of America and the United Nations Regarding the Headquarters of the United Nations, June 26, 1947, 61 Stat. 3416, T.I.A.S. No. 1676 (entered into force Nov. 21, 1947).

73. *Id.* at Annex 1.

74. James Oliver Murdock, *Constitutionality of a Treaty or an Executive Agreement with the United Nations to Establish the “World Capital” in the United States*, 15 GEO. WASH. L. REV. 175, 175 (1947).

75. *Id.* at 176-77.

An amendment added by the committee reserves the right of the United States to safeguard its own security along with the right to control entry of aliens into territory other than the headquarters area. This right of self-defense is given expression here as a premise underlying all American policy. This language was inserted in order to make explicit what is a premise of such an agreement in any case.<sup>76</sup>

Still, the decision had been made. The Rockefellers had secured and paid for the site. New York City was and remains the U.N. home. This little history above is just a reminder that the United States was not and was not perceived to be a whole-hearted enthusiast for international law and organization even in the immediate post-World War II years. American enthusiasm had already peaked in the years 1872-1919. By 1945 and 1946, the relationship of America to international law and organization was already showing signs of strain.

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<sup>76</sup>. See FREDERIC L. KIRGIS, JR., *INTERNATIONAL ORGANIZATIONS IN THEIR LEGAL SETTING* 116 (2d ed. 1993) (citing H.R. REP. NO. 80-1093, at 11 (1947)).