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NORTH ATLANTIC TREATY: TRAVAUX PRÉPARATOIRES RECONSTRUCTED

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ABSTRACT

The North Atlantic Treaty does not have records or official minutes of the constituents' interactions between 1948-1949. The North Atlantic Treaty, contrary to the three general multilateral treaties, does not have travaux préparatoires to refer to, or not in principle. There are no collective documents, such as memoranda, minutes of conferences, and drafts of the treaty under negotiation. There is not a drafting history with documentary evidence. There is, however, a two-page paper with a series of agreed interpretations of the treaty made by the Ambassadors Committee. The agreement was reached on the meaning of certain phrases and articles, but was not considered formal or for publication, it constituted simply the understanding of the representatives participating in the discussions as to the interpretation of those phrases and articles. However, the final purpose was for the representatives of the negotiating Governments to adhere to them in so far as possible in any public statements they may make. The other documents available are wires exchange between representatives and their capitals, the British and French representatives' exchanges are available. The former is the most abundant, while the French is scarce and what exists is similar to the British material. This is not sufficient. For this reason, it is imperative to reconstruct what is available. This should not be an impediment to try to reconstruct them, even if the legal binding value might be questionable from the orthodox standpoint. There is much to be researched since the North Atlantic Treaty has a supplemental relation with respect to the Charter of the United Nations and has a large and extensive practice.

The Treaty mentions several times the Charter provisions and institutions. The legal position of NATO does not come from the provisions of the North Atlantic Treaty, which means it has to rely on other treaties to provide NATO institutions a proper legal position. This also makes necessary to address the three general multilateral treaties, NATO SOFA and its Protocol of Paris and the Ottawa Agreement, accompanied by the 'rules of the organization', which together cover not only the institutional requirements of NATO, but also create three difference international organizations within NATO. This all show the complexity of NATO as an international organization, arcanus, which is reinforced by the lack of formal travaux to shed light on certain particularities of NATO. The historical account of the four rounds of negotiations, the description of NATO governing treaties particularities with respect to NATO's institutionalization, and the analysis of the

North Atlantic Treaty provisions under the light of the above and NATO's practice may cover the gap left by the absence of travaux and help academics and practitioners in their endeavours to decipher NATO's complexities.

Keywords

North Atlantic Treaty – UN Charter - *travaux préparatoires* – Article 103 of the UN Charter – Mutual Assistance - Principle of Consultation – Armed Attack – NATO Bodies – International Institutional Law.