



Institut suisse de droit comparé
Schweizerisches Institut für Rechtsvergleichung
Istituto svizzero di diritto comparato
Swiss Institute of Comparative Law

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Rencontres informelles de l'Institut suisse de droit comparé

Constitutional Review of Treaties?

A Functional Comparison of German, French, and Dutch Practice

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The relationship between international law and municipal law has long been of great interest to international legal scholars. However, traditional frameworks on treaties' domestic effects overemphasize the monism-dualism dichotomy and overlook national constitutional law and jurisprudence.

This presentation will examine German and French law on the conclusion of treaties, including consideration of the *Bundesverfassungsgericht's* and the *Conseil constitutionnel's* jurisprudence on the judicial control of treaties' constitutionality. This examination reveals four common but varied functions between the two regimes: 1) ensuring legal unity and certainty, 2) safeguarding fundamental rights, 3) protecting political minorities against the executive and parliamentary majority, and 4) conferring political legitimacy on treaties or affect their legitimacy otherwise. The Netherlands features three functional equivalents: a clear collision rule, political review by the Council of State etc., and conventionality review.

The presentation will also discuss the benefits and limitations of adopting the functional approach of comparison in public law. It will highlight the need to transcend the simple "one to one" illusion and conduct a holistic "many to many" functional comparison. It will also underline the stronger impact of culture and history on public law and the challenges it poses to functional comparison. Finally, it will conclude by putting forward a version of contextualized functional comparison suitable to public law.

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