



**SUN Yi**  
**CONSTITUTIONAL REVIEW OF TREATIES?**  
**AN INTERNATIONAL LEGAL ASSESSMENT OF GERMAN, FRENCH, AND DUTCH PRACTICE**  
**FROM A FUNCTIONALIST PERSPECTIVE**  
**MPIL Agora**  
**20 December 2023, 16:00-17:00, Room 014**

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. A holistic "many to many" functional comparison reveals four common but varied functions between the two systems: 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 evaluate these functional equivalents against the *lex lata* of the law of treaties. While affirming the legality of *ex ante* constitutional review of treaties, it will underline the legal issues raised by *ex post* constitutional review of treaties and present as better alternatives collision rules that give precedence to treaties, treaty-conform systemic integrative interpretation, and conventionality review of treaties. Finally, it will conclude by proposing as policy suggestions a matrix that outlines the "terms of engagement", taking into account various factors and different perspectives.



**About the Speaker**

SUN Yi is a PhD candidate at the Institute of International Law, Ludwig Maximilian University of Munich. His research interests include constitutional law as well as public international law and lie in particular at their intersections from a comparative perspective, such as international human rights law and foreign relations law.

He holds an LL.M. degree in Constitutional and Administrative Law from Peking University Law School, as well as LL.B. and B.B.A degrees from Renmin University of China. In parallel to his PhD studies, he worked as a research assistant at the Institute of East Asian Studies, University of Cologne. He was also a visiting fellow at the Amsterdam Center for International Law and a van Calker scholar at the Swiss Institute of Comparative Law. Previously, he interned at the United Nations Office of Legal Affairs and the European Court of Human Rights.

**For all enquiries regarding MPIL Agora coordination please contact:**  
**Dr. Malcolm Jorgensen [jorgensen@mpil.de](mailto:jorgensen@mpil.de)**