EISSN: 2622-9668|PISSN: 2622-982X
Volume 9 Nomor 2 Agustus 2026: 443-468
DOI: 10.30996/jhbbc.v9i2.133594
Jurnal Hukum Bisnis Bonum Commune

State Institutional Practice and the Monist Approach to International Economic Law: Foreign Investment in Timor-Leste

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Article History:
Submitted:
25-05-2026
Received:
09-06-2026
Accepted:
16-07-2026

Keywords:
state institutional practice; monist approach; international economic law; foreign investment; structural discrimination

Abstract

The integration of international economic law into domestic legal systems heavily relies on state institutional practices to bridge the gap between text and reality. In Timor-Leste, while Article 9 of the 2002 Constitution establishes a monist approach to international law, the state's actual institutional practices create a severe tension between constitutional guarantees and structural discrimination in foreign investment. This research aims to analyze the institutional practice of Timor-Leste in implementing the monist approach to international economic law and to formulate a prescriptive model for institutional reconstruction capable of eliminating structural discrimination while supporting the country's full accession to the WTO and ASEAN. This study employs normative legal research using statutory, comparative, and conceptual approaches. The study finds that persistent institutional fragmentation, overlapping administrative authorities between TradeInvest and sectoral ministries under Law No. 15/2017, and delays in official gazette publications have functionally transformed constitutional monism into procedural dualism. This institutional failure manifests as structural discrimination, as foreign investors face unpredictable bureaucratic labyrinths that breach international standards such as Fair and Equitable Treatment (FET). To mitigate these risks and ensure compliance with WTO and ASEAN obligations, this research proposes a comprehensive institutional reconstruction through the establishment of a Unified Investment Authority with determinative cross-sectoral power and the enactment of an International Treaties Implementation Act to guarantee legal certainty and administrative coherence.

1. Introduction

The constitutional framework of the Democratic Republic of Timor-Leste (RDTL) presents a distinctive normative tension in the reception of international economic law. Article 9(1) of the 2002 Constitution adopts the general or customary principles of international law into the domestic legal system, suggesting an automatic and direct incorporation mechanism.[1] Yet Article 9(2) subjects treaty obligations to a procedural requirement of ratification and official publication in the Jornal da República before they acquire domestic legal effect. This constitutional dualism creates structural uncertainty regarding the hierarchical status of international investment norms within Timor-Leste's domestic legal order.[2] The resulting

[1] Adino Nunes Cabral, "The Adoption of the Semi-Presidential System: Alternatives to the Government System from the Perspective Constitutional Law of Republic Democratic of Timor-Leste – RDTL," *International Journal of Innovation and Thinking* 2, no. 8 (August 28, 2025): 501–16, https://doi.org/10.71364/ijit.v2i8.71.

[2] Carolina da Cruz, "Post-Independence Economic Regulation In Timor Leste: Normative Analysis Of Foreign Investment Law," *Collegium Studiosum Journal* 8, no. 2 (December 24, 2025): 419–27, https://doi.org/10.56301/csj.v8i2.1973.

ambiguity is not merely doctrinal; it directly affects the legal certainty of foreign investors and the consistency of state administrative practice in investment governance.

The doctrinal resolution of this tension requires a precise conceptual framework regarding the relationship between international and domestic law. The monist tradition, contrary to its common treatment as a uniform doctrine, encompasses several theoretically distinct models. Kelsenian monism, articulated in General Theory of Law and State (1945), posits a unified normative hierarchy in which international law and municipal law constitute a single legal system, with international norms potentially applying directly without legislative transformation.[3] Verdrossian monism emphasizes the primacy of jus cogens norms and the constitutional foundation of international legal obligations, suggesting that certain peremptory norms override even domestic constitutional provisions.[4] Constitutional monism, refers to systems in which the constitution itself explicitly mandates the direct applicability of international law, thereby embedding international norms within the domestic constitutional structure.[5] Cooperative monism, by contrast, acknowledges the unity of the legal order while recognizing the necessity of domestic procedural mechanism such as parliamentary approval or official publication to facilitate the effective coordination between international commitments and domestic implementation.[6]

The constitutional architecture of Timor-Leste, particularly the interplay between Article 9(1) and Article 9(2), does not align neatly with any single model. Rather, it exhibits characteristics of constitutional monism in its automatic reception of customary international law, while simultaneously incorporating cooperative monist elements through its procedural requirements for treaty publication and ratification. This conceptual hybridity complicates the assessment of whether international investment obligations apply directly within the Timorese legal system and, consequently, the extent to which foreign investors may rely upon constitutional guarantees of protection.

The constitutional layout of the RDTL is further reinforced by Article 140 of the Constitution, which obligates the state to promote investment and protect national economic activities, serving as the constitutional basis for economic development through foreign investment. Normatively, the convergence of Article 9(1) and Article 140 suggests a deliberate state policy of aligning domestic investment governance with international standards. However, this constitutional orientation has not been matched by institutional capacity capable of ensuring coherent administrative implementation. The procedural barrier established by Article 9(2) requiring ratification and publication in the Jornal da República, introduces a dualistic element that creates uncertainty regarding the hierarchical position of

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[3] Thomas Bustamante, "Dworkin's Interpretivism, Legal Monism, and the Threat of 'Authoritarian' International Law," *Transnational Legal Theory* 14, no. 2 (April 3, 2023): 117–56, https://doi.org/10.1080/20414005.2023.2232598.

[4] Thomas Kleinlein, "Jus Cogens Re-Examined: Value Formalism in International Law," *European Journal of International Law* 28, no. 1 (February 1, 2017): 295–315, https://doi.org/10.1093/ejil/chx015.

[5] Jure Vidmar, "Demands of the International on the Domestic," in *Research Handbook on International Law and Domestic Legal Systems* (Cheltenham: Edward Elgar Publishing, 2024), 78–97, https://doi.org/10.4337/9781800373167.00011.

[6] Sanh Sh. Qader, "Examining International Treaty Governance within the Iraqi Legal Framework," *Koya University Journal of Humanities and Social Sciences* 6, no. 1 (June 10, 2023): 332–53, https://doi.org/10.14500/kujhss.v6n1y2023.pp332-353.

international norms in investment administration. When national regulations are not aligned with international commitments,[7] or when administrative agencies apply inconsistent standards, foreign investors face regulatory uncertainty that undermines the constitutional guarantee of protection.[8]

These issues are increasingly apparent in the implementation of the *Lei do Investimento Privado*, or Law No. 15 of 2017 concerning Private Investment Law. This regulation is designed to simplify investment procedures by strengthening TradeInvest Timor-Leste's function as a one-stop shop for investment services.[9] Nevertheless, its administrative implementation still faces fragmented authority between TradeInvest Timor-Leste, the Ministry of Finance, and other sectoral technical ministries. This situation creates inconsistent licensing, overlapping administrative procedures, and regulatory uncertainty, which directly affect the protection of foreign investors. M. Sornarajah, in The International Law on Foreign Investment (2010), classifies this condition as structural discrimination that does not always stem from explicit norms, but arises from institutional patterns and bureaucratic practices that systematically disadvantage certain parties.[10]

The urgency of this research lies in the need to address the dualism of legal approaches and institutional fragmentation that give rise to legal uncertainty and structural discrimination against foreign investors in Timor-Leste. This pressing legal necessity includes resolving the normative inconsistency between the guarantee of automatic adoption of international law under Article 9(1) of the RDTL Constitution and the procedural barrier of mandatory publication in the Official Gazette (*Jornal da República*) under Article 9(2); evaluating Law No. 15 of 2017 concerning the Private Investment Law (Lei do *Investimento Privado*) due to horizontal overlapping of administrative authority between *TradeInvest* Timor-Leste as the one-stop agency and sectoral technical ministries; and the critical need to formulate regulatory harmonization following Timor-Leste's full accession to the World Trade Organization (WTO) and ASEAN. Without improvements to state administrative capacity and clarity regarding the hierarchy of legal norms, the monist commitments enshrined in the constitution will remain merely provisions on paper, potentially triggering a new wave of international investment arbitration disputes and undermining Timor-Leste's economic stability.

Research on investment law and the application of international law in developing countries has been conducted by various scholars with differing focuses. Carolina da Cruz, writing in the *Collegium Studiosum Journal*, examines the development of foreign investment regulation in Timor-Leste in the post-independence period, finding that the investment legal

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[7] Andrii Borovyk, Andrii Golovach, and Andrii Oksentiuk, "Legal Regulation Of Investment Activity: Guarantees And Restrictions," *Baltic Journal of Economic Studies* 11, no. 4 (September 24, 2025): 126–33, https://doi.org/10.30525/2256-0742/2025-11-4-126-133.

[8] Roman Holovko, "Administrative And Legal Support Of Economic Freedom And Entrepreneurial Activity In Ukraine," *Baltic Journal of Economic Studies* 11, no. 5 (December 24, 2025): 334–41, https://doi.org/10.30525/2256-0742/2025-11-5-334-341.

[9] Mats Lundahl and Fredrik Sjöholm, "Population Growth and Job Creation: The Search for a Modern Sector," in *The Creation of the East Timorese Economy* (Cham: Palgrave Macmillan, 2019), 137–98, https://doi.org/10.1007/978-3-030-22052-5_4.

[10] Cheng BIAN, "Data as Assets in Foreign Direct Investment: Is China's National Data Governance Compatible with Its International Investment Agreements?," *Asian Journal of International Law* 13, no. 2 (July 21, 2023): 342–64, https://doi.org/10.1017/S2044251322000595.

framework remains normatively oriented toward economic stabilization and the protection of foreign investors.[11] Meanwhile, Andrii Borovyk et al., in the Baltic Journal of Economic Studies, emphasized that the effectiveness of investment protection is greatly influenced by the balance between legal guarantees and state administrative restrictions.[12] On the other hand, I Dewa Gede Palguna and Agung Wardana in the *Asian Journal of International Law* show that the monistic approach in state practice is not always applied absolutely, but rather is adjusted to constitutional needs and the capacity of domestic institutions.[13] These three previous studies still have limitations, as they have not specifically analyzed the relationship between state institutional practices, the monist approach to international economic law, and the emergence of structural discrimination against foreign investors in the context of a post-conflict country such as Timor-Leste. Accordingly, the present research aims to fill this gap through an integrative approach that combines constitutional law, international investment law, and state institutional capacity.

The novelty of this research lies in its analytical framework, which links the implementation of the monist approach under Article 9 of the Constitution of the Democratic Republic of Timor-Leste with the problem of institutional fragmentation in foreign investment practice. This study not only examines the normative application of international economic law within the national legal system but also evaluates how weaknesses in administrative coordination and state institutional capacity affect the effectiveness of foreign investment protection. Furthermore, it proposes a model for the reconstruction of state institutions, oriented toward harmonizing constitutional guarantees, the effectiveness of investment administration, and compliance with international economic law standards following Timor-Leste's accession to the WTO and ASEAN. Therefore, this research aims to analyze Timor-Leste's institutional practices in implementing the monist approach to international economic law under the RDTL Constitution, and to formulate an institutional model capable of preventing structural discrimination against foreign investors by strengthening legal certainty, inter-agency coordination, and the alignment of national investment regulations with the state's international obligations. This article seeks to examine (1) How has Timor-Leste implemented the monist approach to international economic law in the governance of foreign investment? (2) What institutional reconstruction model is required to ensure legal certainty, prevent structural discrimination, and strengthen compliance with obligations arising under international economic law?

2. Methods

This research is a normative legal study that focuses on analyzing the implementation of the monist approach to international economic law within the institutional practices of the state in Timor-Leste, as well as its implications for the protection of foreign investment. Normative legal research is employed here because this study regards law as a set of norms,

[11] Carolina da Cruz, "Post-Independence Economic Regulation In Timor Leste: Normative Analysis Of Foreign Investment Law."
[12] Borovyk, Golovach, and Oksentiuk, "Legal Regulation Of Investment Activity: Guarantees And Restrictions."
[13] I Dewa Gede Palguna and Agung Wardana, "Pragmatic Monism: The Practice of the Indonesian Constitutional Court in Engaging with International Law," *Asian Journal of International Law* 14, no. 2 (July 22, 2024): 404–24, https://doi.org/10.1017/S2044251323000723.

which are analyzed through legislation, legal principles, and legal doctrines relevant to the research topic. The primary focus of the study is directed toward the relationship between constitutional arrangements, administrative implementation, and the effectiveness of foreign investment protection within Timor-Leste's legal system. The research approaches applied are the statute approach and the conceptual approach. These approaches are used to examine constitutional provisions, investment regulations, as well as the concepts of monism, international economic law, structural discrimination, and state institutional capacity.

Primary legal materials in this research include the 2002 Constitution of the Democratic Republic of Timor-Leste, the Lei do *Investimento Privado* or Law No. 15 of 2017 concerning the Private Investment Law, international investment agreements, provisions of the World Trade Organization (WTO), and ASEAN legal instruments related to foreign investment. In addition, this study also utilizes provisions of the Vienna Convention on the Law of Treaties 1969, the Draft Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA 2001), and the ASEAN Comprehensive Investment Agreement (ACIA) as supporting primary legal materials. Secondary legal materials consist of academic books, legal journals, scholarly articles, and findings of previous research addressing international investment law, monist theory, institutional capacity, and practices of international law implementation in developing countries. Tertiary legal materials include legal dictionaries, legal encyclopedias, institutional reports, and other supporting documents relevant to the object of the study. All these legal materials are used to construct a systematic legal argument regarding the relationship between the monist approach and the effectiveness of investment-related institutions in Timor-Leste.

The technique for processing legal materials is carried out through the stages of inventory, identification, classification, and systematization of legal materials in accordance with the legal issues under examination. Inventory is conducted to collect all relevant legal sources, while identification and classification are used to sort legal materials based on normative hierarchy and relevance to the substance of the research. Furthermore, systematization is performed to arrange the interconnections between constitutional norms, investment regulations, and international legal instruments within a single coherent analytical framework. The data analysis technique employed is qualitative analysis, applying methods of legal interpretation, deductive reasoning, and prescriptive argumentation. Through these methods, this research aims to formulate an institutional reconstruction model capable of strengthening the implementation of the monist approach to international economic law and ensuring legal certainty for foreign investment in Timor-Leste.

3. Results and Discussion

3.1. The Paradox of Constitutional Monism: Institutional Fragmentation and the Manifestation of Structural Discrimination in Foreign Investment in Timor-Leste

Timor-Leste's choice to adopt a monist approach in the 2002 Constitution of the Democratic Republic of Timor-Leste reflects the state's orientation toward integrating international law into the national legal system. This approach is embodied in Article 9(1) of the RDTL Constitution, which states that the legal system of East Timor shall adopt the general or customary principles of international law. This provision demonstrates that international customary law is automatically accepted as part of national law without requiring additional transformative legislation. This choice aligns with Hans Kelsen's conception of monism set out

in the Pure Theory of Law, which regards international law and national law as a single unified hierarchical normative order, with the *Grundnorm* serving as the supreme starting point that confers validity upon the entire system.[14] In the context of international economic law, this approach is intended to strengthen Timor-Leste's credibility as a state that is open to foreign investment and committed to international legal certainty.

The monist approach enshrined in the RDTL Constitution is also closely linked to the legal and political needs of the newly independent state in securing international legitimacy. As a post-conflict nation, Timor-Leste requires recognition and trust from international institutions and global investors to support its national economic development.[15] Therefore, direct acceptance of the principles of international law is positioned as a constitutional instrument to strengthen global economic integration.[16] This step signals that the state is willing to abide by internationally recognized investment protection standards. However, this normative orientation has not yet been fully matched by the readiness of domestic institutions to implement international obligations effectively.

A rigorous constitutional analysis demonstrates that the normative tension between Article 9(1) and Article 9(2) cannot be resolved by simply characterising Timor-Leste as a pure monist state. Pure monism in the strict Kelsenian sense requires the unmediated application of all international norms without domestic procedural preconditions.[17] Timor-Leste does not satisfy this standard because Article 9(2) explicitly subordinates the domestic enforceability of treaty rules to the completion of constitutional procedures. Furthermore, Timor-Leste does not fit the model of moderate monism where constitutions acknowledge the primacy of international law while permitting procedural filtering.[18] The publication requirement in Timor-Leste operates as a constitutional *sine qua non* for the domestic entry into force of treaties rather than a mere technicality. Therefore, the constitutional architecture of Timor-Leste most accurately reflects a hybrid monist-dualist framework that is monist in its reception of customary international law and quasi-dualist in its treatment of treaty obligations.

This hybrid character carries direct implications for the incorporation and domestic enforceability of international economic law. This constitutional arrangement amounts to a constitutional inconsistency because the text simultaneously proclaims the normative unity of international and domestic law while imposing a dualistic procedural barrier that freezes that

[14] Phil Edwards, "Hans Kelsen, International Law and the 'Primitive' Legal Order," *Jurisprudence* 16, no. 4 (October 2, 2025): 691–720, https://doi.org/10.1080/20403313.2025.2457805.
[15] Carolina da Cruz, "Post-Independence Economic Regulation In Timor Leste: Normative Analysis Of Foreign Investment Law."
[16] Julien Chaisse and Georgios Dimitropoulos, "Domestic Investment Laws and International Economic Law in the Liberal International Order," *World Trade Review* 22, no. 1 (February 13, 2023): 1–17, https://doi.org/10.1017/S1474745622000404.
[17] FX Adji Samekto, Muh. Mahfud, and Adya Prabandari, "Grundnorm, Pure Theory of Law, and Monism in the Dynamics of International Law," *Indonesian Journal of International Law* 22, no. 4 (June 27, 2025): 681–704, https://doi.org/10.17304/ijil.vol22.4.1911.
[18] Tuomo Rautakivi and Maurice Yolles, "Diagnosing Complex Organisations with Diverse Cultures — Part 2: Application to ASEAN," *Systems* 12, no. 3 (March 21, 2024): 107, https://doi.org/10.3390/systems12030107.

very same unity.[19] Consequently, treaties that have been ratified but not yet published in the *Jornal da República* occupy a constitutionally uncertain status. These treaties are binding upon Timor-Leste under international law by virtue of the *pacta sunt servanda* principle enshrined in Article 26 of the Vienna Convention on the Law of Treaties 1969. However, investors cannot directly invoke these commitments and administrative authorities cannot apply them in the domestic sphere until the constitutional publication requirement has been fulfilled.[20] This inherent constitutional inconsistency serves as the primary source of the legal uncertainty afflicting the governance of foreign investment in Timor-Leste.

This normative ambiguity has direct implications for the operational ineffectiveness of state administrative law in investment governance in Timor-Leste. When administrative bodies such as TradeInvest receive applications for facilities from foreign investors based on recently ratified but unpublished Bilateral Investment Treaties, a doctrinal conflict arises.[21] Resolving this conflict requires a primary determination of whether the treaty provision is self-executing or non-self-executing. A self-executing treaty provision is capable of direct application before domestic courts and administrative bodies without implementing legislation due to its clear content and the evident intent of the parties.[22] Such provisions create immediate rights and obligations that private parties can directly invoke, whereas a non-self-executing provision requires domestic legislative or regulatory implementation before it can take effect within the national legal order.[23]

In Timor-Leste, the combined effect of Articles 9(1) and 9(2) of the Constitution implies that even self-executing treaty provisions cannot produce direct effect until ratification and official publication are fulfilled. This position differs markedly from the approach adopted in Articles 93 and 94 of the Dutch Constitution. Under the Dutch framework, self-executing treaty provisions that are binding on all persons by virtue of their contents take direct effect within the domestic legal order and prevail over inconsistent Acts of Parliament.[24] Conversely, the constitutional design of Timor-Leste does not explicitly resolve the question of treaty supremacy over ordinary legislation. This institutional silence creates further uncertainty as to whether ratified and published investment agreements enjoy hierarchical priority over the *Lei do Investimento Privado* or related administrative regulations.

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[19] Ahmed Oudah Mohammed AL-DULAIMI and Mohammed Abd Abas Al-Esawy, "Reconciling Constitutional Rules And International Laws: A Doctrinal Study On The Innovative Role Of Constitutional Reconciliation In Iraq And Egypt," *UUM Journal of Legal Studies* 15, no. 2 (July 30, 2024): 483–504, https://doi.org/10.32890/uumjls2024.15.2.4.

[20] Ivar Alvik, "The Justification of Privilege in International Investment Law: Preferential Treatment of Foreign Investors as a Problem of Legitimacy," *European Journal of International Law* 31, no. 1 (August 7, 2020): 289–312, https://doi.org/10.1093/ejil/chaa027.

[21] Caslav Pejovic and Juliartha Pardede, "Revising Bilateral Investment Treaties as a New Tendency in Foreign Investment Law: India and Indonesia in the Focus," *Indonesian Journal of International Law* 17, no. 2 (January 31, 2020): 253–72, https://doi.org/10.17304/ijil.vol17.2.786.

[22] Vidmar, "Demands of the International on the Domestic."

[23] Vesna Crnić-Grotić, Sandra Fabijanić Gagro, and Petra Perišić, "Annex G of the 2001 Agreement on Succession Issues: Self-Executing or Not?," *Poredbeno Pomorsko Pravo* 62, no. 177 (2023): 95–121, https://doi.org/10.21857/y54jofvp6m.

[24] Jakob Hohnerlein, "Treaty Rigidity and Domestic Democracy: Functions of and Constitutional Limits to Democratic Self-Binding," *Leiden Journal of International Law* 35, no. 3 (September 23, 2022): 595–617, https://doi.org/10.1017/S0922156522000243.

Issues related to publication are also not fully addressed by the existing implementing regulatory framework. Decree-Law No. 1/2002 concerning the Form of Acts and Publication regulates the form of normative measures and procedures for issuance in the *Jornal da República*, but it does not set clear time standards for the enactment of international treaties. This creates the potential for a significant time gap between the ratification of an agreement and its formal enactment, even though under international law the state is already bound by the principle of *pacta sunt servanda*. More pertinently, Article 27 of the Vienna Convention on the Law of Treaties 1969 provides that a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty, meaning that Timor-Leste cannot rely on the absence of official publication as a legal excuse for non-compliance with ratified investment obligations.[25] Within the framework of monism, this inconsistency between external compliance and domestic implementation places state authorities in a difficult position, as any delay in publication may give rise to allegations of breach of treaty obligations. Accordingly, the absence of an administrative mechanism ensuring timely publication represents an institutional design flaw that directly undermines the integrity of monist commitments.

Such delays in domestic implementation can erode the state's credibility in fulfilling its international investment obligations. Foreign investors require operational certainty that capital protection standards can be enforced effectively without being obstructed by local bureaucratic inefficiencies.[26] When the entry into force of an internationally binding treaty is made dependent on a slow domestic enactment process, the legitimate expectations of investors regarding the regulatory stability of the host state are systematically undermined. This situation carries the potential to trigger international investment disputes before arbitral forums such as ICSID, given that such administrative inaction may be qualified as a failure by the state to uphold the standard of fair and equitable treatment.[27] Therefore, the issue of publishing legal instruments in the *Jornal da República* is no longer merely a matter of domestic administrative inefficiency, but rather a systemic omission that carries implications for the activation of the state's international responsibility.

This problem also reveals a failure of the legal system to fulfill its core function. Joseph Raz emphasizes that law performs its authoritative function when its norms can be clearly identified and applied by both officials and citizens as practical reasons for action.[28] In the context of Timor-Leste, ratified but unpublished investment agreements cannot be easily identified by investors or administrative officials as applicable norms, meaning they lose their binding force in practical terms even though they are formally binding. Uncertainty regarding their legal status undermines the ability of the law to effectively guide the conduct of both

[25] Nadiya Salsabila, "Enlightenment and Its Impact To Vina Convention on The Law of Treaties 1969," *International Journal of Latin Notary* 5, no. 1 (November 30, 2024): 20–24, https://doi.org/10.61968/journal.v5i1.20.
[26] Suroso, Durahman, and Budi, "The Simplification of Licensing Procedure in Job Creation Law: The Effectiveness to Attract Foreign Investor."
[27] Tinyiko Lawrence Ngobeni, "The International Court System: A Solution to the Crisis in Investor-State Arbitration?," *Potchefstroom Electronic Law Journal* 27 (January 17, 2024): 1–35, https://doi.org/10.17159/1727-3781/2024/v27i0a14259.
[28] Martin, "Raz's Appeal to Law's Authority."

investors and state authorities. This situation weakens the authoritative function of international law within a monist framework, as norms that ought to be integrated into the legal order are instead trapped in an administrative vacuum.[29] This demonstrates that normative monism without strengthened implementation mechanisms will only result in commitments that exist merely on paper.

The second dimension of the challenges faced by Timor-Leste lies in the institutional design of investment administration. Law No. 15 of 2017 concerning the Private Investment Law (*Lei do Investimento Privado*) establishes TradeInvest Timor-Leste as a one-stop shop institution, which ideally centralizes facilitation processes, the granting of fiscal incentives, and the coordination of licensing procedures for foreign investment.[30] The design of this one-stop shop system aims to reduce fragmentation of authority, simplify procedures, and provide a single point of coordination to align national regulations with the ASEAN Comprehensive Investment Agreement (ACIA) and WTO standards.[31] However, the provisions within this law contain a legislative design flaw, as they do not explicitly transfer substantive and sector-specific licensing authority from technical ministries to TradeInvest. Consequently, de facto powers remain horizontally dispersed: TradeInvest acts merely as an administrative facilitator, while sectoral ministries retain full substantive decision-making authority.

This ambiguity regarding jurisdiction is further compounded by the institutional status of TradeInvest, which is structurally regulated under Decree-Law No. 58/2022. Although established as a public body under the supervision of the Ministry of the Coordinator for Economic Affairs (*Ministério do Coordenador dos Assuntos Económicos* – MCAE), TradeInvest is not vested with legal supremacy to override or set aside decisions issued by sectoral ministers, who exercise independent authority over matters related to investment projects.[32] This coordination model, which does not involve the transfer of full authority to TradeInvest, reduces the one-stop service agency to a mere "administrative mailbox". As a result, foreign investors are still required to navigate the bureaucratic system independently by approaching various technical ministries, which ultimately negates the guarantees provided by international economic law certainty and manifests structural discrimination caused by the ineffective functioning of state institutions.

Peter Cane emphasizes that horizontal jurisdictional conflict is one of the primary sources of legal uncertainty in modern administrative systems, as it makes it difficult for legal subjects to anticipate which institution holds the final authority over a specific decision.[33] In investment practice in Timor-Leste, foreign investors may encounter situations where

[29] Gallo and Labus, "The Direct Effect (or Lack Thereof) of International Law in the EU Legal Order, Today."
[30] Sarah Logan et al., "Timor-Leste's Drivers of Growth and Sectoral Transformation" (Oxford, 2021), https://researchonline.lse.ac.uk/id/eprint/111556/1/Sacchetto_timor_Lestes_drivers_of_growth_published.pdf.
[31] Biyu Ma and Dingming Yu, "Balancing Regional Integration and National Diversity in IP Harmonization: Lessons from the EU and ASEAN," *Asian Journal of Technology Innovation* 34, no. 1 (January 2, 2026): 53–72, https://doi.org/10.1080/19761597.2025.2495354.
[32] Carolina da Cruz, "Post-Independence Economic Regulation In Timor Leste: Normative Analysis Of Foreign Investment Law."
[33] Paul Craig, "Comparative Administrative Law and Political Structure†," *Oxford Journal of Legal Studies* 37, no. 4 (November 21, 2017): 946–965, https://doi.org/10.1093/ojls/gqx020.

recommendations or approvals from TradeInvest do not automatically translate into substantive permits by sectoral ministries,[34] or vice versa. This creates acute procedural risks, including duplication in document requirements, differing assessment standards, and the potential for conflicting decisions between the facilitating agency and sectoral implementing bodies.

M. Sornarajah develops the concept of structural discrimination to describe regulatory frameworks that appear neutral on their face but impose disproportionate practical burdens upon foreign investors.[35] In Timor-Leste, overlapping authority between TradeInvest and sectoral ministries has led to a multi-layered and opaque licensing process. Domestic business actors familiar with bureaucratic structures easily navigate this complexity through informal networks and contextual knowledge.[36] Conversely, foreign investors lacking similar access face greater operational obstacles. This fragmented institutional design indirectly gives rise to structural discrimination against foreign operators even in the absence of explicit origin-based restrictions.

An adequate doctrinal foundation to test this structural discrimination requires engagement with three core principles of international economic law. These standards are the National Treatment Principle, the Most-Favoured-Nation Principle, and the overarching Non-Discrimination Principle.[37] These core pillars are articulated under both the WTO legal regime and the ASEAN Comprehensive Investment Agreement. Under Article III of GATT 1994, the National Treatment obligation prohibits measures that accord less favourable treatment to foreign investors and their investments than to like domestic competitors.[38] Furthermore, the Most-Favoured-Nation principle enshrined in Article I of GATT 1994 and Article 5 of the ASEAN Comprehensive Investment Agreement requires that any investment advantage granted to one partner be extended immediately and unconditionally to all others.[39]

Operating as an overarching standard in both frameworks, the Non-Discrimination Principle strictly prohibits both *de jure* and *de facto* discrimination. While *de jure* discrimination arises where a regulatory measure formally differentiates between foreign and domestic investors, *de facto* discrimination occurs where a facially neutral measure produces differential and disproportionate burdens in practice. In Timor-Leste, the overlapping administrative competencies between TradeInvest and sectoral ministries combine with the absence of

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[34] Antonino Pedro Marsal et al., "Legal Certainty in Guaranteeing Foreign Investment in Timor Leste to Improve The National Economy," *Rechtsnormen: Journal of Law* 2, no. 4 (December 31, 2024): 466–74, https://doi.org/10.70177/rjl.v2i4.1654.

[35] Muthucumaraswamy Sornarajah, *Leading Works in International Law*, ed. Donna Lyons (London: Routledge, 2023), https://doi.org/10.4324/9781003133407.

[36] Amonrat Thoumrungroje and Nang Sarm Siri, "Unraveling Formal and Informal Business Ties in Shaping Foreign Subsidiary Capabilities," *Review of International Business and Strategy* 34, no. 3 (May 20, 2024): 412–32, https://doi.org/10.1108/RIBS-08-2023-0098.

[37] Yoshimura, *Routledge Handbook on International Economic Law*.

[38] Fiona Beveridge, "The Treatment of Foreign Investment," in *The Treatment and Taxation of Foreign Investment under International Law* (Manchester: Manchester University Press, 2022), https://doi.org/10.7765/9781526171245.00016.

[39] Meredith Kolsky Lewis, "International Trade Agreements: Laboratories of Innovation or Propellers of Fragmentation?," *Journal of International Economic Law* 26, no. 1 (March 9, 2023): 110–23, https://doi.org/10.1093/jiel/jgac050.

transparent procedures to create objective indicators of discrimination. This regulatory framework is formally neutral but modifies the conditions of competition to the detriment of foreign investors. This systemic disadvantage meets the threshold for *de facto* discrimination under both WTO and ASEAN standards because it burdens foreign operators without objective justification.

The institutional situation in Timor-Leste is directly relevant to the standard of fair and equitable treatment (FET). In its award in the case of Tecmed v. Mexico, ICSID interpreted FET as requiring the host state to provide a legal framework that is consistent, transparent, and predictable, as well as to respect the investor's legitimate and reasonable expectations based on the legal framework and the representations made by the state at the time the investment was made.[40] The Waste Management v. Mexico ruling affirms that FET prohibits arbitrary actions or systemic administrative negligence that results in an opaque or lack of due process for investors..[41] If Timor-Leste's institutional structure allows for prolonged delays, conflicting decisions, or the absence of clear lines of responsibility, such conditions can hardly be regarded as consistent with the FET standard. Accordingly, institutional fragmentation in Timor-Leste may potentially be qualified as a breach of international investment protection obligations if it results in uncertainty and inconsistent administrative treatment.

State responsibility under international law requires the cumulative establishment of two elements, which are the attribution of conduct to the state and the existence of a breach of an international obligation.[42] Article 12 of ARSIWA 2001 provides that a breach occurs when an act of a state is not in conformity with what is required by that obligation, regardless of its origin or character. In Timor-Leste, the failure to promptly publish ratified treaties combined with systemic procedural burdens from fragmented institutional authority constitutes a breach. This dual failure falls short of the obligations assumed under investment and trade agreements, particularly the fair and equitable treatment standard and the national treatment obligation.

Furthermore, where a breach is established, Article 31 of ARSIWA 2001 confirms that the responsible state must make full reparation for the injury caused by the internationally wrongful act. This obligation encompasses both material damage and moral injury. In the investment context, this translates into potential state liability for compensation before ICSID or other arbitral fora for losses suffered by foreign investors due to administrative failures. The comprehensive framework of state responsibility under ARSIWA encompassing attribution under Article 4, a breach under Article 12, and legal consequences under Article 31 provides the overarching international legal architecture within which the institutional deficiencies of Timor-Leste must be assessed and addressed.

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[40] Jarrod Hepburn, "The Legal Justification for the Doctrine of Legitimate Expectations in International Investment Law," *European Journal of International Law* 36, no. 1 (May 26, 2025): 43–75, https://doi.org/10.1093/ejil/chaf017.

[41] Chester Brown, "The Award in Waste Management v Mexico (No 2) and Its Influence on the Minimum Standard of Treatment," *The Australian Year Book of International Law Online* 40, no. 1 (December 7, 2022): 173–94, https://doi.org/10.1163/26660229-04001008.

[42] Carlo de Stefano, "Attribution of Conduct to a State," *ICSID Review - Foreign Investment Law Journal* 37, no. 1–2 (August 9, 2022): 20–50, https://doi.org/10.1093/icsidreview/siab031.

The institutional practice of the state in implementing the monist approach to international economic law in Timor-Leste reveals a paradox between "law in the books" and "law in action". At the formal level, the RDTL Constitution and Law No. 15/2017 establish a normative framework that is relatively aligned with international standards and reflects a commitment to integration with the global trading system, including the process towards full membership in the WTO. In practice, however, the absence of effective publication mechanisms, fragmentation of authority, and limited institutional capacity mean that these commitments are not fully realised in the experience of foreign investors. This situation carries the risk of claims alleging structural discrimination and violations of the FET standard, with significant legal and reputational consequences for the state. For Timor-Leste, a post-conflict nation in the process of building international legitimacy, this paradox constitutes a major challenge that must be addressed through institutional reconstruction better aligned with the monist design enshrined in the Constitution.

3.2. Reconstructing the State Institutional Model: Towards Transparency, Multilateral Compliance, and Regional Integration

Institutional reconstruction in the context of international economic law monism in Timor-Leste starts from the premise that constitutional commitments require adequate institutional design to be meaningful. In Gustav Radbruch's perspective, a legitimate legal order must simultaneously pursue three fundamental values: justice, utility, and legal certainty.[43] Each of these three values is demonstrably compromised by Timor-Leste's current institutional framework. Therefore, institutional reconstruction serves as a form of normative correction to ensure that these core pillars are put into practice.

The value of justice requires that like cases be treated alike and that the law operate without arbitrary differentiation.[44] In Timor-Leste, the fragmentation of authority between TradeInvest and sectoral ministries produces inconsistent treatment of investors in materially similar situations. This institutional failure directly undermines the formal equality that justice demands. To restore this value, the proposed Unified Investment Authority promotes justice by establishing standardised and non-discriminatory procedures across all sectors. The value of utility or purposiveness requires that the legal system effectively achieve its declared social and economic objectives.[45] The current institutional architecture frustrates the constitutional purpose of attracting foreign investment and promoting economic development as encoded in Article 140 of the Constitution. This frustration occurs because administrative fragmentation renders the investment environment unpredictable and burdensome. The Unified Investment Authority restores utility by creating an effective, consolidated institutional mechanism capable of achieving this constitutional investment mandate.

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[43] Marijan Pavčnik, "Radbruch, Gustav: His Formula and Concept of Law," in *Encyclopedia of the Philosophy of Law and Social Philosophy*, ed. Miodrag Jovanovic (Dordrecht: Springer Netherlands, 2023), 2924–28, https://doi.org/10.1007/978-94-007-6519-1_218.

[44] Stiliyan Yotov, "Material Justice and Formal-Procedural Rule of Law Conceptual Asymmetries," in *Rule of Law in Crisis*, ed. Martin Belov (London: Routledge, 2022), 18, https://doi.org/10.4324/9781003349501.

[45] Niken Junika Sari, Ahmad Arif Zulfikar, and Sulaiman Dorlah, "Implementation of International Arbitration Awards in Indonesia from the Perspective of Legal Value Theory," *Jurnal Media Hukum* 31, no. 1 (June 22, 2024): 167–85, https://doi.org/10.18196/jmh.v31i1.20026.

The value of legal certainty is arguably the most acutely compromised of the three values within the current framework. Delays in the publication of ratified treaties, overlapping administrative competencies, and the absence of clear procedural timelines directly deprive investors of predictability. The proposed International Treaties Implementation Act directly restores legal certainty by establishing mandatory timelines for treaty publication. Furthermore, this Act codifies the classification of self-executing provisions and excludes administrative delay as a lawful ground for denying investors' rights.

This reconstruction agenda can be deeply understood through the framework of constitutional engineering as developed by Giovanni Sartori.[46] Constitutional engineering emphasizes the importance of deliberate design and reform of secondary institutions and operational mechanisms so that bureaucratic conduct remains consistent with constitutional objectives.[47] In Timor-Leste, the focus of such engineering is not directed toward amending the rigid provisions of the Constitution but rather toward reforming the country's administrative law. This targeted administrative reform effectively harmonizes the operational mechanics of the state with its overarching constitutional directives. Article 9 adopts the general principles of international law, while Article 140 establishes the mandate for economic development through foreign capital. Institutional reconstruction consistent with constitutional engineering therefore functions to bridge the gap between constitutional norms as *law in the books* and investment administration practices as *law in action*. Crucially, this structural alignment achieves full doctrinal coherence without requiring any formal amendment to the rigid constitutional text.

The first step in normative reconstruction addresses the inconsistency between the automatic adoption of customary international law under Article 9(1) and the formal prerequisites under Article 9(2) of the Constitution. It must be acknowledged that Article 9(2) makes official publication in the *Jornal da República* an express constitutional prerequisite for the domestic applicability of treaty obligations. The constitutional text is unambiguous in this regard, and any argument that unpublished treaties may directly govern domestic bodies is difficult to reconcile with this mandate. Therefore, a constitutionally sound approach should not advocate for the full domestic legal effect of unpublished treaties. Instead, this study proposes that the executive branch should accord a provisional administrative effect to ratified treaties pending their formal publication.

Under this model, the executive branch would be required to issue an administrative directive immediately upon parliamentary ratification of an international treaty.[48] This directive would instruct all relevant agencies, including TradeInvest and sectoral technical ministries, to take the provisions of the ratified treaty into account during decision-making. Administrative bodies would also be required to refrain from adopting measures that are

[46] Bruce Ackerman, *The Rule of Law and the Separation of Powers*, ed. Richard Bellamy (Routledge, 2017), https://doi.org/10.4324/9781315085302.
[47] Johanne Poirier and Jesse Hartery, "Para-Constitutional Engineering and Federalism: Informal Constitutional Change through Intergovernmental Agreements," *International Journal of Constitutional Law* 20, no. 2 (November 9, 2022): 758–87, https://doi.org/10.1093/icon/moac040.
[48] Bruno Theodoro Luciano and Cairo Gabriel Borges Junqueira, "Beyond Parliamentary Ratification: The Role of National and Subnational Parliaments in EU-Mercosur Trade Negotiations," *Journal of European Integration* 45, no. 4 (May 19, 2023): 665–82, https://doi.org/10.1080/07036337.2022.2129630.

manifestly inconsistent with the newly undertaken international commitments. Such a provisional mechanism does not constitute formal domestic legal incorporation and therefore does not contravene Article 9(2). However, it effectively enables the government to begin fulfilling its international obligations in good faith pursuant to Article 26 of the Vienna Convention on the Law of Treaties.

This strategic approach successfully preserves full compliance with the constitutional requirement that treaties acquire binding domestic legal force only upon their formal publication.[49] It simultaneously bridges the gap between international commitments and domestic constitutional law by preventing immediate breaches of international law. The proposed International Treaties Implementation Act should explicitly codify this mechanism of provisional administrative effect to ensure institutional compliance.[50] This legislation must clearly establish the specific conditions and scope of the provisional application. Finally, the Act must mandate a strict maximum period within which official publication must follow ratification to prevent indefinite administrative limbo.

A core element of the International Treaties Implementation Act is the need to adopt a clear distinction between self-executing and non-self-executing treaties. As demonstrated by Articles 93 and 94 of the Dutch Constitution, a monist system can maintain legal certainty by stipulating that treaty provisions which are binding on anyone by virtue of their contents apply directly within the national legal order.[51] These provisions can be invoked before domestic courts without requiring additional transformative legislation. This distinction is highly relevant for Timor-Leste following its accession to the WTO and ASEAN because various technical provisions do not require secondary regulations to be implemented. By adopting a similar approach, the new treaties implementation law in Timor-Leste can explicitly specify the categories of international economic provisions that are directly binding upon administrative authorities and courts.

To strengthen this doctrinal foundation, the comparative framework must include France and Portugal due to Timor-Leste's deep roots in the Portuguese civil law tradition. Under Article 55 of the French Constitution, duly ratified treaties enjoy primacy over domestic legislation provided that the other contracting party applies the treaty on a reciprocity basis. French courts, including the *Conseil d'État* and the Court of Cassation, interpret this provision to confer a direct effect on self-executing treaty provisions.[52] Consequently, individuals can

[49] Oana Ştefan, "Preserving the Rule of Law Through Transnational Soft Law: The Cooperation and Verification Mechanism," *Hague Journal on the Rule of Law* 16, no. 3 (December 8, 2024): 671–92, https://doi.org/10.1007/s40803-024-00222-7.
[50] Ute Brady, "The Grammar of Monitoring and Enforcement Mechanisms in International Conservation: A Comparative Institutional Analysis of Four Treaty Regimes," *Environmental Policy and Governance* 33, no. 5 (October 2, 2023): 489–503, https://doi.org/10.1002/eet.2045.
[51] Niels Graaf, "An Introduction to Dutch Legal Culture," in *Handbook on Legal Cultures*, ed. Sören Koch and Marius Mikkel Kjølstad (Cham: Springer International Publishing, 2023), 285–326, https://doi.org/10.1007/978-3-031-27745-0_9.
[52] George N. Theodosis, "The European Social Charter and the Charter of Fundamental Rights of the European Union," in *European Identities, Inclusion and Equality*, ed. Despoina Anagnostopoulou (Cham: Springer, 2025), 85–102, https://doi.org/10.1007/978-3-031-90602-2_7.

invoke treaty rights directly before French courts without additional enabling legislation,[53] whereas non-self-executing provisions strictly require parliamentary implementation. This French jurisprudence establishes that clarity in treaty content and the absence of required domestic measures serve as the core criteria for self-execution.

Portugal offers an even closer constitutional parallel because Article 8 of the Portuguese Constitution served as a direct model for Article 9 of the RDTL Constitution. The Portuguese framework automatically incorporates customary international law under Article 8(1) and applies rules of international organisations directly under Article 8(3). However, Article 8(2) subjects the domestic effect of treaty obligations to their compatibility with fundamental constitutional principles. Crucially, Portuguese constitutional jurisprudence distinguishes between self-executing treaty provisions that are directly enforceable in administrative proceedings and non-self-executing provisions that require legislative transposition.[54] Codifying a similar classificatory framework in Timor-Leste will reflect its constitutional heritage and enhance the effectiveness of its monist commitments.

In addition to establishing the classification of self-executing provisions, the treaties implementation law must set a clear and mandatory timeline for the publication of international agreements in the *Jornal da República*. Law No. 1/2002 concerning the Publication of Legal Instruments confirms that publication of international agreements in the *Jornal da República* constitutes an absolute constitutional prerequisite, or sine qua non, for the application of international economic law in Timor-Leste[55] with the consequence that absence of publication results in legal ineffectiveness. However, this post-independence legacy provision does not set any maximum time limit between ratification and formal publication, thereby allowing for lengthy administrative delays. Establishing a strict time limit for example, a maximum of 14 working days following parliamentary ratification would provide clear and predictable timeframes for all state institutions and business actors. From the perspective of the principle of lex certa, such a mandatory timeline strengthens domestic legal certainty while aligning with the obligation of prompt publication required under Article X of GATT 1994 within the WTO framework.[56] Thus, this normative reform regarding publication serves a dual purpose: it fulfils the constitutional mandate and ensures compliance with international obligations.

Another essential component is the inclusion of a clause on pre-emptive enforceability, which stipulates that delays in official publication may not be invoked by state authorities as

[53] Loïc Lerouge and Francisco Trujillo Pons, "Contribution to the Study on the 'Right to Disconnect' from Work. Are France and Spain Examples for Other Countries and EU Law?," *European Labour Law Journal* 13, no. 3 (September 14, 2022): 450–65, https://doi.org/10.1177/20319525221105102.
[54] Gallo and Labus, "The Direct Effect (or Lack Thereof) of International Law in the EU Legal Order, Today."
[55] Hercus Pereira Dos Santos, "The Brief History of Fundamental Rights in East Timor," *International Journal of Contemporary Sciences (IJCS)* 3, no. 10 (October 31, 2025): 307–18, https://doi.org/10.55927/560jae79.
[56] Petros C. Mavroidis et al., "Do Private Actors Have Rights under the WTO? The Motivation for and (Inadequate) Implementation of GATT Article X," *Journal of World Trade* 58, no. Issue 5 (July 1, 2024): 727–59, https://doi.org/10.54648/TRAD2024037.

a legal defence to deny rights arising from investment agreements.[57] Article 26 of the Vienna Convention on the Law of Treaties (VCLT 1969) states that "every treaty in force is binding upon the parties to it and must be performed by them in good faith." International law consistently rejects the use of internal legal weaknesses or domestic bureaucratic negligence as justification for breaches of treaty obligations.[58] By explicitly incorporating this principle into the treaties implementation act, Timor-Leste legally restricts the discretion of administrative bodies to delay the fulfilment of foreign investors' rights on grounds of technical limitations regarding publication. Systemically, this clause mitigates the risk of international disputes and state responsibility arising from discrepancies between external commitments and domestic practice, while also demonstrating Timor-Leste's full adherence to the principle of *pacta sunt servanda* within its monist legal framework.

Beyond normative aspects, institutional reconstruction requires a more decisive restructuring of the investment administration architecture. Law No. 15 of 2017 concerning the Private Investment Law (*Lei do Investimento Privado*) established *TradeInvest Timor-Leste* as a one-stop service agency, yet it did not clearly vest it with final decision-making authority across all sectors. Under this design, TradeInvest operates primarily as a facilitator rather than a decision-making body, meaning technical ministries retain significant control over substantive licensing matters. This fragmentation creates overlapping competencies, complicates procedures for investors, and undermines the very concept of a genuine one-stop system. To address the root of this problem, it is necessary to develop a model for a Unified Investment Authority (UIA), tasked with centralising all licensing powers relating to foreign investment within a single entity. The UIA would represent not merely a name change, but a structural reallocation of administrative authority.

Establishment of the UIA will require revisions to Law No. 15/2017 and to Decree-Law No. 58/2022, which regulates TradeInvest's status in greater detail, to confer upon the UIA final and determinative cross-sectoral decision-making power.[59] Within this framework, technical authorizations such as environmental permits, spatial planning permits, and other sectoral recommendations must be formally assigned to the UIA through an unconditional delegation of power mechanism. Effective regulation of complex sectors requires a clear normative command center to prevent coordination distortions and conflicting standards between agencies.[60] By establishing the UIA as the single main point of contact for licensing decisions, the state will reduce transaction costs, eliminate procedural duplication, and

[57] Alain Germeaux, "International Law and the Use of Force," in *The International Legal Order in Global Governance* (Cham: Springer International Publishing, 2022), 229–318, https://doi.org/10.1007/978-3-031-16057-8_4.
[58] Gregory Shaffer and Wayne Sandholtz, "The Rule of Law Under Pressure: A Transnational Perspective," *Hague Journal on the Rule of Law* 16, no. 2 (August 5, 2024): 393–438, https://doi.org/10.1007/s40803-024-00210-x.
[59] Miranda Kanon and Thomas Andersson, "Working on Connective Professionalism: What Cross-Sector Strategists in Swedish Public Organizations Do to Develop Connectivity in Addressing 'Wicked' Policy Problems," *Journal of Professions and Organization* 10, no. 1 (June 5, 2023): 50–64, https://doi.org/10.1093/jpo/joac020.
[60] David Levi-Faur, "Re-Imagining Regulatory Governance," *Regulation & Governance*, April 14, 2026, 1–16, https://doi.org/10.1111/rego.70159.

strengthen accountability. This structure also makes it easier to establish state responsibility if promised administrative standards are breached.

In addition to its licensing authority, the UIA should be equipped with effective oversight and corrective mechanisms in the form of a dedicated administrative appeal process. A specialized judicial review framework may be designed, whereby foreign investors are entitled to lodge administrative appeals before a supervisory board within the UIA; decisions of this board may then be subject to expedited judicial review before the Chamber of the Court of Appeal, acting as the superior court.[61] Constitutionally, Article 27 of the RDTL Constitution guarantees access to courts for all persons to defend their legal rights and interests. By providing a streamlined and dedicated appeal pathway, this institutional reconstruction seeks to give effect to that constitutional guarantee in the field of foreign investment. This mechanism also strengthens deterrence against administrative practices that are potentially discriminatory or arbitrary.

The reconstruction of the UIA must be designed to comply with WTO law standards, which have been binding on Timor-Leste since it became the 166th member of the Organization in 2024. Article III of GATT 1994 sets out the principle of national treatment, which requires that foreign and domestic products be treated equally once they enter the domestic market. Functionally, this principle also applies to the treatment of foreign and domestic investors alike.[62] Article 2 of the Agreement on Trade Related Investment Measures (TRIMs) governs investment measures related to trade in goods, primarily prohibiting local content requirements and trade-balancing measures. This trade agreement does not directly regulate matters of bureaucratic efficiency, administrative coordination, or institutional fragmentation. Accordingly, institutional fragmentation in Timor-Leste's investment governance should not be characterised as a violation of the TRIMs Agreement. Such a characterisation would exceed the established doctrinal scope of the agreement under the WTO framework.

The more appropriate analytical lens is that of investment facilitation, transparency, and administrative efficiency. These priorities are reflected in the principles endorsed by WTO Members in the Investment Facilitation for Development Agreement and the broader investment climate standards within the ASEAN Economic Community framework. The establishment of the UIA directly advances these international standards by creating standardised, transparent, and efficient licensing procedures. This structural alignment ensures that the quality of regulatory governance is fully consistent with the commitments Timor-Leste has assumed as a WTO Member and ASEAN aspirant.

Beyond the national treatment principle, institutional reconstruction is also closely connected to the transparency obligation set out in Article X of GATT 1994. This provision requires WTO Members to publish promptly all laws, regulations, and administrative rulings

[61] Hasim Sukamto, Hulman Panjaitan, and Paltiada Saragi, "Legal Protection for Foreign Investors at Normative and Implementation Levels in Indonesia," *International Journal of Law, Crime and Justice* 2, no. 2 (April 26, 2025): 46–53, https://doi.org/10.62951/ijlcj.v2i2.567.
[62] Qianwen Zhang and Andrew Mitchell, "Data Localization and the National Treatment Obligation in International Investment Treaties," *World Trade Review* 21, no. 4 (October 17, 2022): 391–410, https://doi.org/10.1017/S1474745621000549.

of general application that affect trade, and to administer them in a uniform, impartial, and reasonable manner.[63] This obligation directly relates to the publication regime in Timor-Leste, where Law No. 1/2002 on the Publication of Legal Instruments stipulates that regulations and treaties must be published in the *Jornal da República* in order to acquire legal effect; failure to do so results in legal ineffectiveness. Delays in publishing international investment treaties or related implementing regulations may be regarded as inconsistent with the "prompt publication" standard mandated by the WTO. By placing WTO compliance monitoring functions under the Unified Investment Authority (UIA), the state can establish a system that routinely verifies the consistency and timeliness of publication for all legal instruments relevant to investors.

At the regional level, institutional reconstruction must align with obligations arising from Timor-Leste's full accession to ASEAN, including the ratification of the ASEAN Comprehensive Investment Agreement (ACIA) 2009. Article 5 of ACIA sets out the national treatment obligation for investors and investments within the region, while Article 11 guarantees minimum standards of treatment, including the principle of fair and equitable treatment (FET). ACIA also establishes an Investor-State Dispute Settlement (ISDS) mechanism, which enables investors to bring claims against a Member State if they have suffered harm as a result of acts or omissions on the part of public authorities.[64] In situations where fragmented authority gives rise to unpredictable administrative obstacles, the risk of ISDS claims against Timor-Leste increases. By designating the UIA as the focal point for investment policy and ensuring procedural consistency, the state can mitigate this risk and demonstrate compliance with regional investment standards.

To ensure that domestic investment governance complies with ACIA and other ASEAN instruments, the UIA should be equipped with an International Investment Law Unit, tasked with conducting ex ante compliance reviews of policies and administrative decisions that may potentially affect foreign investors. This Unit may apply as benchmarks the standards of fair and equitable treatment, national treatment, and the principle of non-discrimination set out in ACIA, as well as the ASEAN Investment Facilitation Framework (AIFF). The AIFF emphasises the importance of institutional transparency, predictability, and efficiency in investment licensing procedures as part of ASEAN's economic integration agenda.[65] Through this internal oversight mechanism, decisions issued by the UIA will be brought into closer alignment with regional obligations, thereby reducing the likelihood of administrative measures that could lead to international disputes. Institutional reform in the investment sector can also generate spill-over effects, promoting harmonisation across other areas of law in Timor-Leste in line with the blueprint of the ASEAN Economic Community.

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[63] Padideh Ala'i, "The WTO as a Forum for Regulatory Cooperation: Transparency and Open Plurilateral Agreements," in *The Future of Trade* (Cheltenham: Edward Elgar Publishing, 2023), 252–75, https://doi.org/10.4337/9781035315420.00020.

[64] Stanislava Nedeva, "The Neglected Public Interest in Investor-State Dispute Settlement: Environmental and Human Rights Considerations," *European Energy and Environmental Law Review* 33, no. Issue 5 (October 1, 2024): 214–31, https://doi.org/10.54648/EELR2024014.

[65] Dao Kim Anh, "The Evolution of ASEAN International Investment Agreements: Insights from the Past and Future Directions," *VNU Journal of Science: Legal Studies* 41, no. 1 (March 30, 2025): 33–48, https://doi.org/10.25073/2588-1167/vnuls.4743.

At the constitutional level, this entire reconstruction agenda represents an effort to fulfil constitutional obligations that have not yet been fully realised. Article 9 of the RDTL Constitution provides for the adoption of general principles and customary international law, while also requiring that treaties be integrated into the national legal system through approval and publication procedures. Meanwhile, Article 140 of the RDTL Constitution stipulates that the state shall promote investment and protect national economic activities, establishing this as a constitutional mandate for economic development. Where these norms are not supported by an effective institutional structure, the result is a state of "incomplete monism" — monism in legal text, but dualism in practical application. Normative reconstruction through the International Treaties Implementation Act and the establishment of the UIA serves as a corrective to this situation, where constitutional commitments have remained under-implemented.

The analytical framework derived from Lon L. Fuller's principles of legality in *The Morality of Law* extends well beyond a single principle. Fuller identifies eight core principles that define the inner morality of law which are generality, promulgation, non-retroactivity, clarity, non-contradiction, possibility of compliance, constancy, and congruence.[66] In the context of Timor-Leste's treaty implementation framework, the principles of promulgation, clarity, and congruence are each directly implicated. The existing domestic legal regime demonstrates a systemic failure to satisfy any of these three philosophical pillars.

The principle of promulgation requires that laws be made publicly available before they are applied to individuals.[67] In Timor-Leste, persistent delays between the ratification of international treaties and their official publication in the *Jornal da República* severely undermine this requirement. Because of these institutional delays, ratified treaty obligations cannot be accessed, anticipated, or relied upon by investors within the domestic order. This legislative gap leaves foreign operators in a state of regulatory blindness despite the state being bound externally under international law.

The principle of clarity dictates that legal rules must be intelligible and unambiguous in their scope and application.[68] Timor-Leste's constitutional and statutory framework fails this principle by creating severe doctrinal ambiguity. The current legal regime fails to identify with sufficient precision which category of treaties is self-executing. Furthermore, the framework does not clarify which administrative body holds the final authority to grant investment approvals, nor does it establish the exact hierarchical position of ratified treaties relative to ordinary legislation.

[66] Frederick Schauer, *Routledge Handbook of the Rule of Law*, ed. Michael Sevel (London: Routledge, 2024), https://doi.org/10.4324/9781351237185.
[67] James Milton, "The Rule of Law and Full-Bodied Promulgation," *The Modern Law Review* 88, no. 3 (May 19, 2025): 502–26, https://doi.org/10.1111/1468-2230.12934.
[68] Krzysztof Koźmiński and Paulina Konca, "The Law of Interpretation as a Recipe for Legal Knowledge in the Era of Post-Modernization of Legislation," *The Theory and Practice of Legislation* 14, no. 1 (January 2, 2026): 1–22, https://doi.org/10.1080/20508840.2025.2521177.

The principle of congruence requires that the actual conduct of state officials conform to the rules that have been publicly declared.[69] In Timor-Leste, a major discrepancy exists between the constitutional requirements of Article 9 and the government's actual practice. The disjunction between the constitutional commitment to monism in Articles 9 and 140 and the administrative actions of TradeInvest represents a profound failure of congruence. By ignoring or delaying the application of ratified treaty obligations, these domestic agencies function as quasi-dualist organs that disrupt the rule of law.

Institutional reconstruction through a Unified Investment Authority and the refinement of the treaty implementation regime represents an urgent effort to restore this crucial congruence. From the perspective of the rule of law, these structural measures do not merely improve administrative efficiency. They actively reinforce the state's standing as a serious international actor committed to fulfilling its constitutional obligations. Implementing these reforms ensures that the inner morality of Timorese law aligns with international economic expectations.

This structural alignment transforms monism from a mere constitutional doctrine into a concrete and measurable administrative practice. If Timor-Leste succeeds in executing this institutional reconstruction, it will significantly reduce the potential for structural discrimination against foreign investors. Furthermore, a cohesive administrative framework will strengthen the state's position within global and regional economic networks. For a post-conflict nation seeking market legitimacy, consistency between constitutional design and institutional practice serves as the primary indicator of its governance quality.

4. Conclusions

Timor-Leste's decision to adopt a monist approach in the 2002 Constitution of the Democratic Republic of Timor-Leste demonstrates the state's commitment to integrating international economic law into the national legal system. However, the implementation of this approach has not been effective, owing to normative inconsistencies within the Constitution itself and weak institutional coordination in the governance of foreign investment. The fragmentation of authority between TradeInvest Timor-Leste and sectoral technical ministries has given rise to administrative uncertainty, resulting in structural discrimination against foreign investors. This situation shows that Timor-Leste's core challenge lies not in a lack of normative commitment to international law, but rather in limited institutional capacity to translate international norms into consistent, transparent, and predictable administrative practice. Consequently, the effectiveness of the monist approach can only be realised if administrative law reform is carried out systematically and in a manner that is fully aligned with Timor-Leste's international investment obligations.

Institutional reconstruction through the establishment of a UIA and the enactment of specific legislation governing the implementation of international agreements represents a strategic step toward strengthening legal certainty for investment in Timor-Leste. This institutional model can streamline cross-sectoral coordination, accelerate the implementation of international treaties, and ensure that national investment policies comply with WTO and

[69] Jeferson Tadeu de Souza and Luciano Rossoni, "How the Congruence between Public Servants' Schemas and Legal Legitimacy Affects Top-down Public Policy Implementation," *Frontiers in Sociology* 10 (May 21, 2025): 1–13, https://doi.org/10.3389/fsoc.2025.1505494.

ASEAN standards, in particular the principles of national treatment, fair and equitable treatment, and administrative transparency. Beyond its practical relevance for reforming investment administration in Timor-Leste, this model may also serve as a reference for other post-conflict developing countries facing similar challenges in reconciling international law with domestic institutional capacity. The Government of Timor-Leste should follow up these reforms by revising the Lei do Investimento Privado, strengthening administrative oversight mechanisms, and building human resource capacity in the fields of investment and international law. In this way, institutional reconstruction will function not only as an instrument of investment governance, but also as a means of fulfilling the state's constitutional duty to uphold legal certainty and investment protection in keeping with developments in contemporary international economic law.

5. Acknowledgements

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6. Funding (optional)

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