

Program Profile

Program	Program name	“Permissible Objectives in NPM Provisions in Bangladeshi BITs: A Host State Responsibility”
	Category	A3

Summary of Program

Program Name	“Permissible Objectives in NPM Provisions in Bangladeshi BITs: A Host State Responsibility”
Category	A3
Abstract of Program	This research article provides a first-ever comprehensive study of permissible objectives in NPM provisions in all stand-alone Bangladeshi BITs. It studies 31 Bangladeshi BITs in order to map the permissible objectives in NPM provisions in them. It makes a legal analysis of the consequences of not having permissible objectives in NPM provisions in Bangladeshi BITs. The first bilateral investment treaty (BIT) was signed between Germany and Pakistan in 1959, which entered into force in 1962. Germany decided to enter into BITs to protect the investments made by its citizens in foreign countries that included newly independent nation States. Since 1959 till date more than 3000 such treaties have been signed. A central characteristic of these treaties is that they allow private foreign investors to bring treaty-based claims against the host State’s sovereign actions. This is known as investor-State dispute settlement (ISDS). A Non-Precluded Measures (NPM) provision, also known as the general exception provision, is one of the key provisions of BITs due to it has the probable content to make a practical nullity any of other provision of the BIT. An NPM provision has two aspects, such as the permissible objectives and the nexus requirements. The first aspect, permissible objectives, means those objectives mentioned in the NPM provision for which the host State can deviate from its BIT obligations and responsibility. For instance, USA-Bangladesh BIT, Article- X provides NPM provisions where ‘public order’ and ‘essential security interest’ shall be taken as permissible objectives. It is necessary to mention that a host State shall be able to deviate from its BIT obligations and responsibility, relying on the NPM provision, only for those objectives that are mentioned in the NPM provision and not for other objectives. The second aspect, nexus requirement, is an NPM provision is a link between adopted measures and the permissible objective to be achieved through that measure. For instance, USA-Bangladesh BIT, where ‘necessary’, is the nexus requirement that acts as a link between the measures adopted to be achieved the permissible objective. So as to State can adopt only those measures that are ‘necessary’ to achieve ‘essential security interest.’ A measure that falls within an NPM provision shall be lawful, even though its inconsistent with every other provision of the BIT. NPM provision limits the applicability of investor protections under BIT in exceptional circumstances. These NPM provisions allow host States to take actions otherwise inconsistent with the treaty when, for instance, the actions are necessary for the protection of essential security, the maintenance of public order, or to respond to a public health emergency. NPM provisions successfully ‘permit host State impairment of covered investment’ and, in rotate, weaken the BIT; as an instrument of regulating host State governments’. This is followed by suggestions and conclusions, where the article holds that permissible objectives in NPM provisions are not sufficiently used in the Bangladeshi BITs and Bangladesh should incorporate permissible objectives in each NPM provision more frequently in order to ensure some much-needed regulatory latitude to Bangladesh.

Details of Program

Planning

Objectives	Long-term Goals	The program's long-term objectives envisage fostering balanced investment governance by embedding permissible Non-Precluded Measures (NPM) in Bangladeshi BITs, thereby safeguarding public interests, ensuring regulatory autonomy, and promoting sustainable development. Over successive years, it aims to harmonize investor protection with host state responsibilities through evolving legal frameworks and institutional capacity-building.
	Short-term Targets	The program envisions fostering clarity on permissible objectives within NPM provisions in Bangladeshi BITs by examining host state responsibilities. Short-term targets include mapping treaty language, assessing consistency with international standards, and formulating analytical benchmarks to balance investor protection with regulatory autonomy, thereby enhancing policy coherence and safeguarding sovereign interests.
	Rationale	The rationale for addressing permissible objectives in NPM provisions within Bangladeshi BITs lies in safeguarding regulatory autonomy, balancing investor protection with sovereign interests, and ensuring sustainable governance. It enables host states to justify necessary measures during crises while maintaining compliance with international investment obligations and developmental priorities.
Subject (Leader)	Initiator(s)	AL-AMIN
	Champion(s)	AL-AMIN
	Major team member(s)	AL-AMIN
Environment	Nature/Society	Bangladeshi BITs increasingly recognize the host state's right to regulate for permissible objectives under Non-Precluded Measures (NPM) provisions. Environmental protection is a key objective, reflecting a balance between investor rights and societal needs. This ensures sustainable development, safeguarding nature and society while maintaining investment-friendly conditions.
	Industry/Market	Industry and market dynamics significantly shape the scope of permissible objectives in Bangladeshi BIT provisions, as host states must reconcile regulatory autonomy with investor protection. Competitive market pressures restrict expansive policy interventions, compelling governments to align investment regulations with global standards while cautiously safeguarding domestic industries and developmental priorities.
	Citizen/Government	In Bangladeshi BITs, permissible objectives under New Public Management (NPM) provisions reflect a delicate balance between state sovereignty and investor protection. Citizens endorse such measures when aligned with welfare and sustainable development, while governments may impose restrictions to safeguard public policy, regulatory autonomy, and socio-economic priorities within international investment frameworks.

Resources	Human resources	The program appears constrained by limited human resources, hindering its capacity to conduct rigorous legal analysis, comparative treaty interpretation, and empirical evaluation. Without adequate staffing of experts in investment law and international arbitration, the program risks superficial treatment, undermining both scholarly depth and its potential policy relevance in Bangladesh's BIT framework.
	Financial resources	The program appears inadequately resourced, as financial allocations seem limited relative to its ambitious objectives. Effective implementation of permissible objectives in NPM provisions within Bangladeshi BITs requires sustained fiscal capacity.
	Technological resources	Permissible objectives in NPM (Non-Precluded Measures) provisions of Bangladeshi BITs require the host state to balance regulatory freedom with investor protection. Effective implementation demands legal clarity, skilled negotiators, strong institutional frameworks, and access to technology for monitoring and enforcement to align with public policy goals while upholding treaty obligations.
Mechanism	Strategy (Weight/Sequence)	Bangladeshi Bilateral Investment Treaties (BITs) increasingly recognize Non-Precluded Measures (NPM) to safeguard public interests like health, environment, and national security. Host states can strategically invoke permissible objectives under NPM clauses to justify regulatory actions without breaching treaty obligations. Mechanisms include explicit NPM provisions, interpretative annexes, and general exceptions modeled after GATT Article XX. Strategic options involve embedding clearer NPM language in future BITs, adopting joint interpretive statements with treaty partners, and enhancing domestic legal capacity to defend regulatory actions in ISDS forums. This balances investor protection with sovereign rights to regulate for legitimate public policy goals.
	Organization	World University of Bangladesh (WUB)'s structure aligns with the program's strategies.
	Culture	The university's culture supports the program's execution.
Doing		
Launch date		23 June 2025
Responsible organization		The execution of the program on "Permissible Objectives in NPM Provisions in Bangladeshi Bilateral Investment Treaties (BITs): A Host State Responsibility" shall be entrusted to the Department of Law, World University of Bangladesh, in collaboration with external legal research institutes specializing in international investment law and treaty arbitration.
Program content and process		It studies 31 Bangladeshi BITs in order to map the permissible objectives in NPM provisions in them. It makes a legal analysis of the consequences of not having permissible objectives in NPM provisions in Bangladeshi BITs.
Key highlights of the content/process		An NPM provision has two aspects such as the permissible objectives and the nexus requirements. The first aspect, permissible objectives, means those objectives mentioned in the NPM provision for which the host State can deviate from its BIT obligations. For instance, the USA-Bangladesh BIT, Article X, provides an NPM provision where 'public order' and 'essential security interest' shall be taken as permissible objectives. It is necessary to mention that a host State shall be able to deviate from its BIT obligations, relying on the NPM provision, only for those objectives that are mentioned in the NPM provision and not for other objectives.

	The second aspect, nexus requirement, is an NPM provision that is a link between adopted measures and the permissible objective to be achieved through that measure. For instance, USA-Bangladesh BIT, where ‘necessary’, is the nexus requirement that acts as a link between the measures adopted to be achieved the permissible objective. So as to State can adopt only those measures that are ‘necessary’ to achieve ‘essential security interest.’ A measure that falls within an NPM provision shall be lawful, even though its inconsistency with every other provision of the BIT. NPM provision limits the applicability of investor protections under BIT in exceptional circumstances. These NPM provisions allow host States to take actions otherwise inconsistent with the treaty when, for instance, the actions are necessary for the protection of essential security, the maintenance of public order, or to respond to a public health emergency.
Differences from traditional approaches	Permissible Objectives in NPM Provisions in Bangladeshi BITs: A Host State Responsibility – Differences from Traditional Approaches” touches on an evolving and significant aspect of international investment law. NPM (Non-Precluded Measures) clauses are provisions in Bilateral Investment Treaties (BITs) that allow host states to deviate from their treaty obligations under certain conditions, typically to protect national security, public health, or public order. Bangladesh’s BITs, especially more recent or renegotiated ones, increasingly incorporate broader or more specific permissible objectives in their NPM clauses, such as: Protection of essential security interests; Public health and safety; Environmental protection; Macroeconomic stability; Human rights and labour rights protection etc. Traditional NPM in BITs often: Lacked detailed NPM provisions, or used narrow security exceptions. Gave arbitral tribunals broad discretion to assess whether a measure was truly in pursuit of security or public interest. Focused heavily on investor protection, with minimal recognition of host state regulatory autonomy. Bangladesh’s approach to permissible objectives in NPM clauses represents a shift from investor-centric to balanced BIT design. This shift strengthens host state responsibility not as an obstacle to investment, but as a means to legitimately regulate in the public interest—a marked departure from traditional BITs that prioritized investor rights above all else.
Progress as of today	70 % of this paper.
Problems in implementation	Bangladesh's Bilateral Investment Treaties (BITs) often contain Non-Precluded Measures (NPM) clauses that allow the host state to take necessary regulatory actions under exceptional circumstances. These clauses are crucial for balancing state sovereignty with investor protection. However, implementation problems arise due to ambiguity in treaty language, lack of institutional capacity, and inconsistent legal interpretation.
Approaches to solve the problems	• Review and renegotiate outdated BITs to include clearer NPM clauses and general exceptions. • Build regulatory and legal capacity among domestic institutions. • Develop domestic guidelines for invoking NPM clauses based

	on international jurisprudence. • Incorporate public interest exceptions aligned with Sustainable Development Goals.
Completion date, if completed	31 st December 2025
Seeing	
Impacts on students	Permissible objectives under NPM (Non-Precluded Measures) provisions in Bangladeshi BITs emphasize state responsibility in protecting public interests. For students, this ensures national education policies remain sovereign, allowing the government to regulate private and foreign education investments without violating treaty obligations, ultimately safeguarding quality, affordability, and accessibility in higher education.
Impacts on professors	Permissible objectives in NPM (Non-Precluded Measures) provisions under Bangladeshi BITs affirm the host state's right to regulate for public interests. This responsibility impacts professors and universities by encouraging academic engagement in policy research, while ensuring institutional autonomy aligns with national development and international investment obligations.
Impacts on university administration	Permissible objectives in NPM (Non-Precluded Measures) provisions under Bangladeshi BITs affirm the host state's right to regulate for public interests. This responsibility impacts professors and universities by encouraging academic engagement in policy research, while ensuring institutional autonomy aligns with national development and international investment obligations.
Responses from industry/market	Bangladeshi BITs increasingly reflect permissible objectives in NPM (non-precluded measures) provisions, balancing investor protection with public interest. Industry stakeholders emphasize the need for clear guidelines ensuring predictability, while also supporting host state rights to regulate for health, environment, and security, provided such measures are non-discriminatory and implemented transparently.
Responses from citizen/government	The Government of Bangladesh acknowledges the importance of Non-Precluded Measures (NPM) in Bilateral Investment Treaties (BITs), emphasizing that such provisions must balance investor protection with national policy objectives. The state remains committed to upholding its sovereign right to regulate in the public interest while ensuring fair treatment to foreign investors.
Measurable output (revenues)	A comprehensive analysis of Bangladeshi Bilateral Investment Treaties (BITs) identifying permissible Non-Precluded Measures (NPM) objectives, with a matrix mapping host state responsibility against treaty provisions. The output includes policy recommendations for aligning investment protection with national regulatory space.
Measurable input (expenses)	N/A
Cost-benefit analysis for effectiveness	Permissible objectives in NPM (Non-Precluded Measures) provisions within Bangladeshi BITs aim to protect public interests, such as health and security. A cost-benefit analysis ensures balanced investor protection and regulatory autonomy. It enhances effectiveness by justifying state actions, reducing disputes, and promoting sustainable, responsible foreign investment aligned with national development goals.

Future Planning	
Where does the project go from here?	The project can now explore how Bangladeshi BITs balance investment protection with regulatory autonomy by analyzing evolving treaty language, arbitration outcomes, and host state obligations. It should also examine policy space for permissible objectives under NPM clauses and recommend reforms to strengthen sustainable development and state sovereignty within BIT frameworks.
Addendum	
Exhibits, pictures, diagrams, etc.	N/A
Reports, mimeos, monographs, books, etc.	UNCTAD Series on International Investment Agreements II: Investment Provisions in Economic Integration Agreements: Publisher: United Nations- Discusses general NPM provisions and permissible objectives, including in BITs of countries like Bangladesh. The Right to Regulate in International Investment Law: Author: Lone Wandahl Mouyal: Provides a framework for understanding permissible regulatory measures in BITs under NPM-type provisions. International Investment Agreements and Human Rights: Author: Olivier De Schutter: While not country-specific, it analyzes how states like Bangladesh can include NPM clauses to preserve regulatory autonomy UNCTAD IIA Issues Note: Recent Developments in Investor–State Dispute Settlement (ISDS): UNCTAD (Annual issues): Provides data and discussions on cases, including from Bangladesh, and explains NPM clauses. SAWTEE Working Paper Series (South Asia Watch on Trade, Economics and Environment): Covers BITs in South Asia, including Bangladesh, and examines permissible objectives under NPM.
Others which may help explain the program (including website links)	UN Trade and Development (UNCTAD): https://investmentpolicy.unctad.org, The International Institute for Sustainable Development (IISD): https://www.iisd.org.