

Perspectives on the emerging role of the Asian Infrastructure Investment Bank

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Extensive intellectual effort has been devoted to understanding China's rapid rise since 1978.¹ Most recently, scholars have sought to understand the more assertive nature of Chinese foreign policy under Xi Jinping.² Breslin has recognized the importance of assessing China's foreign policy objectives through its actions, rather than through expressions of doctrine.³ Ferdinand argues that China's 'one belt, one road' (OBOR) initiative is Xi's 'main foreign policy innovation'.⁴ This article argues that the recently established Asian Infrastructure Investment Bank (AIIB) is an equally important innovation, and equally significant in its potential to reshape global infrastructure, both physical and normative.

The AIIB is best understood by applying recursivity of law theory: the theory which examines the processes through which global norms are conveyed to national settings, while national priorities, in turn, influence global norm-making.⁵ Scholars such as Halliday and Carruthers highlight the dynamic, back-and-forth nature of the feedback mechanisms shaping the norms and practices of international relations,⁶ and also of global institutions.⁷ In an increasingly dynamic world, it is important to develop an understanding of the AIIB as an emerging global institution within a framework that is itself as dynamic as the relationships and interactions being examined.

The AIIB is important precisely because it is a new, potentially disruptive institution in the previously rather settled landscape of international development finance. Recursivity theory has the capacity to deal with the dynamic and

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¹ See e.g. David Shambaugh, *China goes global: the partial power* (Oxford: Oxford University Press, 2013); C. Fred Bergsten, Charles Freeman, Nicholas Lardy and Derek J. Mitchell, *China's rise: challenges and opportunities* (Washington DC: Center for Strategic and International Studies, 2009); *International Affairs* 92: 4, July 2016, special edition on Chinese foreign policy.

² *Asian Security* 13: 2, special edition on 'New trends in Chinese foreign policy'. Published online 1 March 2017.

³ Shaun Breslin, 'China and the global order: signalling threat or friendship?', *International Affairs* 89: 3, May 2013, p. 633.

⁴ Peter Ferdinand, 'Westward ho—the China dream and "one belt, one road": Chinese foreign policy under Xi Jinping', *International Affairs* 92: 4, July 2016, pp. 941–57.

⁵ Terence C. Halliday, 'Recursivity of global normmaking: a sociolegal agenda', *Annual Review of Law and Social Science* 5, 2009, pp. 263–89.

⁶ Terence C. Halliday and Bruce Carruthers, *Bankrupt: global lawmaking and systemic financial crisis* (Stanford, CA: Stanford University Press, 2009).

⁷ Nitsan Chorev, 'Changing global norms through reactive diffusion: the case of intellectual property protection of AIDS drugs', *American Sociological Review* 77: 5, 2012, pp. 831–53.

uncertain nature of the processes now in play. It allows the researcher to draw insights from both rationalist and constructivist ways of understanding the world (epistemologies), remaining open to different, and changing, interpretations of evolving relationships between international players.⁸

Law and development scholars have analysed the postwar project of building an international financial architecture, and have revealed the political underpinnings of World Bank and IMF rule-of-law orthodoxy, and of the liberal agenda underpinning much modern development economics.⁹ Recursivity of law theory analyses the unfolding of this agenda through cycles of engagement between the establishment of formal rules (statutes, regulations, institutional guidelines) and the implementation of those rules in practice. While the theory has its roots in the established law, finance and markets literature,¹⁰ it provides a dynamic framework for understanding global legal change that is well suited to explaining the emergence of new actors in changing times.¹¹ In particular, recursivity of law theory facilitates a simultaneous focus on levels of action at the global, regional and national levels. It highlights the ways in which recursive cycles of legal change are driven by four mechanisms: (1) the indeterminacy of legal texts; (2) ideological contradictions within these texts; (3) diagnostic struggles over the problems the texts aim to address; and (4) actor mismatch between those that adopt global norms and those key to their implementation.¹² Each of these mechanisms can be discerned in the emergence of the AIIB as a global institution.

This article has been divided into five parts. The first part examines the establishment and evolution of the AIIB through the prism of China's frequently conflicting domestic political and economic priorities. The second then examines the AIIB through a regional prism—as a source of finance for (often contested) regional development initiatives. This part also highlights the interactions taking place between AIIB member nations, demonstrating that recursive norm-making operates not only through transnational–national cycles of engagement, but through state-to-state cycles of engagement as well. The third part then turns to the new partnerships being forged by the AIIB as it takes its place within a global network of development finance institutions. This network of relationships is particularly important for the AIIB's possible future as a development finance institution with access to funding from the Green Climate Fund (GCF). The fourth part of the article provides a preliminary evaluation of the AIIB's operational mechanisms and financing standards against the yardstick of GCF (global norm-setting) accreditation requirements. While the nature of the relationship

⁸ Halliday, 'Recursivity of global normmaking'.

⁹ Benjamin van Rooij and Pip Nicholson, 'Inflationary trends in law and development', *Duke Journal of Comparative and International Law* 24: 1, 2013, pp. 297–348; Tor Krever, 'The legal turn in late development theory: the rule of law and the World Bank's development model', *Harvard International Law Journal* 52: 1, 2011, pp. 288–319.

¹⁰ Halliday and Carruthers, *Bankrupt*.

¹¹ Geoffrey Shaffer, *Transnational recursivity theory: Halliday & Carruthers' Bankrupt*, research paper no. 11–38 (University of Minnesota Law School, 2011), <http://ssrn.com/abstract=1926830>. (Unless otherwise noted at point of citation, all URLs cited in this article were accessible on 29 June 2017.)

¹² Shaffer, *Transnational recursivity theory*; S. Liu and T. C. Halliday, 'Recursivity in legal change: lawyers and reforms of China's Criminal Procedure Law', *Law and Social Inquiry* 34: 4, 2009, pp. 911–50 at pp. 913–15.

between the AIIB and the GCF is still being negotiated, it will arguably be formative for both institutions. In the fifth and final part, some conclusions are drawn.

Perspective one: the domestic context

The Articles of Agreement (AoA) of the AIIB entered into force on 25 December 2015, when instruments of ratification were deposited by 17 signatories holding initial capital subscriptions totalling 50.1 per cent of the shares allocated.¹³ At the inaugural meeting of the board of governors, held on 16–17 January 2016, the president of the bank and its twelve-member board of directors were formally elected, and key governance documents were approved to facilitate the start of the bank's operations.

The AIIB began with 57 prospective founding members—37 regional members and 20 from outside the region. On 23 March 2017, the board of governors approved 13 additional membership applications, five from regional candidates (Afghanistan; Armenia; Fiji; Hong Kong, China; and Timor-Leste) and eight from countries outside the region (Belgium, Canada, Ethiopia, Hungary, Ireland, Peru, Republic of Sudan and Venezuela), bringing the bank's total approved membership to 70.¹⁴ The five largest capital subscribers after China remain India, Russia, South Korea, Australia and Indonesia.¹⁵ Notable omissions from membership are the United States and Japan. Taiwan refused to join after AIIB president Jin Liqun said that the island would have to follow the Hong Kong model in having mainland China's Ministry of Finance apply on its behalf.¹⁶

Article 1 of the AIIB's AoA provides that 'the purpose of the Bank shall be to (i) foster sustainable economic development, create wealth and improve infrastructure connectivity in Asia by investing in infrastructure and other productive sectors'. It is with these purposes in mind that this article explores the various relationships shaping the AIIB as an emerging multilateral development finance institution.

While there may be no direct evidence that China is trying, or even able, to shape the AIIB to match its own domestic priorities, it would be naive to ignore these priorities as a factor in the formation of the bank. At least two aspects of China's domestic political economy are feeding back into the evolving AIIB. First, overinvestment, accumulated over the past decade or more,¹⁷ has left a legacy of poor-quality inventory, excess capacity, and empty ghost cities of steel and concrete across the Chinese landscape.¹⁸ At the same time, China's foreign

¹³ AIIB, AoA, Beijing, 29 June 2015, art. 59.

¹⁴ AIIB, 'AIIB welcomes new prospective members. Bank approves 13 new applicants; expands membership to 70', 23 March 2017, AIIB website at https://www.aiib.org/en/news-events/news/2017/20170323_001.html.

¹⁵ AIIB, AoA, 2015, Schedule A.

¹⁶ Wendy Wu, 'China-led AIIB sets date to hold first annual meeting in Beijing', *South China Morning Post*, Hong Kong, 13 May 2016.

¹⁷ EU Chamber of Commerce (EUCC) in China, *Overcapacity in China: an impediment to the Party's reform agenda*, 22 Feb. 2016. Report accessible online at <http://www.europeanchamber.com.cn/en/publications-overcapacity-in-china>; Reuters (Indian edn), 'Update—going abroad the solution to China's overcapacity woes—ministry official', 22 July 2015, <http://www.reuters.com/article/china-industry-overcapacity-idUSL3N10230E20150722>.

¹⁸ Tom Mitchell and Christian Shepherd, 'China says its steel overcapacity will remain', *Financial Times*, 10 April

currency reserves remain the largest in the world. The obvious policy solution is for China to apply its excess capacity to overseas projects, and the AIIB provides a strategic vehicle through which this may be done.¹⁹ Though Liao has argued that ‘a system-level examination of China’s changing ... economic interests fails to provide a plausible explanation of Beijing’s foreign policy shift since 2009’,²⁰ this article contends that important systemic drivers are shaping foreign policy initiatives of the Xi administration, including both the OBOR initiative and the AIIB.

A second, closely related, aspect of China’s domestic context that forms a significant part of the backdrop to the developing AIIB is the country’s heavy social and economic burden of environmental degradation. Environmental protection remains a key focus of China’s 13th Five-Year Plan (2016–20)²¹—a focus closely aligned with the centrality of sustainable development in the AIIB Charter.

The crucial connections between environmental recovery, sustainable development and China’s domestic financial system were made clear in a 2015 report entitled *Establishing China’s green financial system*.²² The report is a key policy document, and its 14 recommendations are each aimed at mobilizing private- and public-sector resources in the pursuit of a more sustainable Chinese economy.²³

The AIIB will help to integrate China’s domestic financial system, and in particular its green financial markets, into related world financial markets. It provides a potential mechanism for linking China’s emissions trading markets (ETMs) to ETMs elsewhere in the world.²⁴ It also provides potential links between China’s emerging green bond markets and other bond markets.²⁵

Perhaps the greatest challenge the Chinese system faces in tackling environmental problems is not the technical aspects of new green technology, or new financial instruments, but the need to incorporate international standards of governance, transparency and accountability. The tendency has been to modify international standards, supposedly rendering them suitable for uniquely Chinese conditions. For example, instead of signing up to the internationally recognized Equator Principles for project financing, China’s Export and Import Bank (China Exim Bank) has formulated a similar set of ‘guidelines for environmental and

2016, <https://www.ft.com/content/e62e3722-fee2-11e5-ac98-3c15a1aa2e62?mhqsj=e1>.

¹⁹ EUCC in China, *Overcapacity in China*, pp. 37–8; Mitchell and Shepherd, ‘China says its steel overcapacity will remain’.

²⁰ Nien-Chung Chang Liao, ‘The sources of China’s assertiveness: the system, domestic politics or leadership preferences?’, *International Affairs* 92: 4, July 2016, pp. 817–33.

²¹ Janguang Shen, ‘The 13th Five Year Plan’, *Economics Weekly*, no. 43, 25 Oct. 2015, Mizuho Securities, <http://research.mizuho-sc.com/mizuhoapp/newDownloadAuth.do?T=EQ&TM=mail&R=omANSzAp9nO6MWYwxTXjHA%3D%3D&RND=1481944045298>.

²² People’s Bank of China and UN Environment Programme, *Establishing China’s green financial system: final report of the Green Finance Task Force* (Beijing and Geneva, April 2015), <https://www.cbd.int/financial/privatesector/china-Green%20Task%20Force%20Report.pdf>.

²³ The Climate Group, *Eco-civilization: China’s blueprint for a new era* (London, Beijing, Hong Kong, New Delhi, New York, Feb. 2014), <https://www.theclimategroup.org/sites/default/files/archive/files/China-Ecocivilisation.pdf>.

²⁴ T. Yang, ‘China: a national emissions trading scheme’, *Clifford Chance Global Environment Newsletter*, Spring 2016, p. 5; Xinhua, ‘Financial cooperation to be deepened in belt and road initiative’, 28 March 2015, http://news.xinhuanet.com/english/2015-03/28/c_134105512.htm.

²⁵ King & Wood Mallesons, ‘King & Wood Mallesons taps into green bond market advising on its first issuance of RMB 4 billion’, 18 March 2016, <http://www.kwm.com/en/cn/knowledge/news/king-and-wood-mallesons-taps-into-green-bond-market-advising-on-its-first-issuance-of-rmb-4billion-20160318>.

social impact assessments of loan projects’—guidelines with crucial differences allowing China Exim Bank additional flexibility. This provides an example of what Halliday and Carruthers describe as the mechanism of modelling,²⁶ whereby Chinese institutions model themselves on global templates, but preserve sufficient flexibility to retain maximum control over local implementation.

Similar modelling is evident in other parts of China’s financial infrastructure. In December 2015 the People’s Bank of China published regulations for green bonds issuance in the China interbank market (China’s largest bond market). A few weeks later the National Development and Reform Commission (NDRC) published green bond guidelines for the state-owned enterprise sector, and in March 2016 the Shanghai Stock Exchange published guidelines for corporate green bonds. Each of these sets of guidelines, while closely aligned to global standards for green bonds, such as the International Capital Market Association’s green bond principles,²⁷ includes important differences tailored to Chinese conditions.²⁸

The 2015 *Green financial system report* recognizes the importance of transparency in at least four key recommendations—establishment of a green rating system and green stock index (recommendations 8 and 9), establishment of public interest environmental cost analysis (recommendation 10) and requiring environmental disclosure by listed companies and bond issuers (recommendation 12).²⁹ In each area, standards are emerging that, while modelled on international standards, contain important differences catering for Chinese circumstances. Examples include the 2007 green credit policy, the 2008 green securities policy, the guidelines on environmental information disclosure of listed companies on the Shanghai Stock Exchange (May 2008) and the revised Environmental Protection Law (2014). Notable features of these standards include their ambiguity and lack of specificity,³⁰ resulting in guidelines flexible enough to be interpreted by local Chinese authorities in accordance with changing political priorities.³¹

This suggests that balancing international standards of governance and accountability with its traditional preference for maintaining close control over AIIB operations and decision-making will be a major challenge for China. However, China’s domestic development finance institutions, including China Exim Bank and the China Development Bank, provide mechanisms for supporting overseas investment projects that are important to China and might otherwise not satisfy the prudential, environmental and/or social standards of the AIIB and its inter-

²⁶ Halliday and Carruthers, *Bankrupt*.

²⁷ ICMA, *Green bond principles: voluntary process guidelines for issuing green bonds*, June 2016, <http://www.icmagroup.org/Regulatory-Policy-and-Market-Practice/green-bonds/green-bond-principles/>.

²⁸ Climate Bond Initiative and International Institute for Sustainable Development, *Roadmap for China: green bond guidelines for the next stage of market growth*, London, March 2016, https://www.climatebonds.net/files/files/CBI-IISD-Paper1-Final-01C_A4.pdf.

²⁹ PBC and UNEP, *Establishing China’s green financial system: final report of the Green Financial Task Force*, <https://www.cbd.int/financial/privatesector/china-Green%20Task%20Force%20Report.pdf>.

³⁰ Hua Wang and David Bernell, ‘Environmental disclosure in China: an examination of the green securities policy’, *Journal of Environment and Development* 22: 4, Aug. 2013, pp. 339–69.

³¹ Climate Group, *Eco-civilization*; Scott Wilson, ‘Mixed verdict on Chinese environmental public interest lawsuits’, *The Diplomat*, 20 July 2015, <http://thediplomat.com/2015/07/mixed-verdict-on-chinese-environmental-public-interest-lawsuits/>.

national financial institution (IFI) partners. They can also finance projects that complement AIIB-funded projects in ways that serve China's domestic interests. Recursivity theory supports a dynamic understanding of this uneasy balance between domestic priorities and globally accepted standards as China manages contradictions which arise during successive cycles of institution-building.

Perspective two: belts and roads and regional alliances

China's OBOR initiative, announced by Xi Jinping during a 2013 visit to Kazakhstan, comprises a proposed infrastructure network connecting over 60 countries across the land terrain of the ancient Silk Road land route ('Silk Road economic belt') from China to the Mediterranean, plus an ocean route (the '21st century maritime Silk Road') connecting Europe with the Middle East, Africa and south-east Asia.³²

If the AIIB is the vehicle through which China's overheated investment capacity can be diverted out of the domestic economy, OBOR is the roadmap of destinations for that investment. While the government's 'going out' policy initiative left Chinese multinationals relatively free in deciding the direction of outward investments, OBOR provides a much more directed strategic master plan, mapped out in the March 2015 NDRC announcement, *Vision and actions on jointly building China's OBOR initiative*.

OBOR is backed by the AIIB and by two other recent development finance initiatives: the Silk Road Infrastructure Fund, which is funded from Chinese foreign exchange reserves and operates like a sovereign wealth fund; and the New Development Bank, established by the BRICS nations (Brazil, Russia, India, China and South Africa) in 2014. The March 2015 *Vision* statement also envisages strengthened cooperation within the China-ASEAN interbank cooperation network and the Shanghai Cooperation Organization (SCO) interbank cooperation mechanism.³³

South-east Asia will clearly play a key role in the OBOR initiative, which covers all ten ASEAN states. While this makes OBOR seem quite 'regional' in nature, this apparent regionalism is offset by the marked bilateralism that has characterized China's pursuit of OBOR (and other regional priorities) in practice. The scale and scope of OBOR also sets it apart from more conventionally 'regional' initiatives. Connecting China and its border regions to all parts of Asia, the Baltic states, the Mediterranean, eastern Africa and the 'developed European circle', OBOR is much more interregional or pan-continental than truly 'regional'.³⁴ The overlap-

³² Allen Au-yeung, 'What is the one belt, one road strategy all about?', *South China Morning Post*, Hong Kong, 13 Jan. 2016, <http://www.scmp.com/news/hong-kong/economy/article/1900633/what-one-belt-one-road-strategy-all-about>.

³³ Au-yeung, 'What is the one belt, one road strategy all about?'; Carolyn Dong, Matthew Davis, Peter Li and Simin Yu, 2016: *a new year, a new road? One belt one road—China's new outbound trade initiative*, DLA Piper regulatory update, 18 Jan. 2016, <https://www.dlapiper.com/en/australia/insights/publications/2016/01/chinas-new-outbound-trade-initiative/>.

³⁴ Alice D. Ba, 'Will the TPP and OBOR challenge ASEAN centrality?', *East Asia Forum Newsletter*, 20 May 2016, <http://www.eastasiaforum.org/2016/05/20/will-the-tpp-and-obor-challenge-asean-centrality/>.

ping, tailored-to-region and tailored-to-state initiatives that constitute OBOR are ambitious enough to be seen as an attempt by China to overcome 'the tyranny of geography' in conducting its diplomacy towards its neighbours—not least by freeing it from reliance upon traditional trade routes and markets.³⁵

It will be argued here, however, that the pan-continental nature of the AIIB reflects the influence of other countries on China, rather than the influence of China on other countries. China's original position was that founding membership of the AIIB would be open in the first instance only to countries from the region, with applications from outside Asia not considered until later.³⁶ But the enthusiasm with which European countries, led by the United Kingdom, sought to join the AIIB soon led China to welcome non-Asian founding members as well. An initial focus on Asia was modified to distribute capital shares between regional (75 per cent) and non-regional (25 per cent) members, gaining the bank enhanced international support.

Malcolm Cook contrasts the East–West pan-continental view of Asia reflected in the structure of the AIIB—which includes nine Middle Eastern states among its 37 'regional' members—with the North–South maritime understanding of Asia reflected in the structure of the Asian Development Bank (ADB)—which includes 13 small and micro Pacific states among its 48 'regional' members.³⁷ Another view could see these two different 'visions' of Asia as overlapping, working in tandem through institutional cooperation between the two IFIs, without necessarily coming into conflict.

While Cook also contrasts the dominant share of the AIIB controlled by China with the much smaller share of the ADB controlled by Japan, others have argued that concerns about China seeking to 'control' the AIIB are sometimes overstated.³⁸ China itself has responded to international concerns about its potential veto power within AIIB decision-making structures by scaling back its originally planned capital share from 50 per cent³⁹ to 27.55 per cent of total AIIB capital (as at June 2017).

As well as votes arising from capital contributions, founding members each have an additional 600 founding member votes. When basic votes are added to the mix, in accordance with the rather complicated voting formula set out in article

³⁵ For in-depth discussion of the 'tyranny of geography', see Zhang Yunling, 'China and its neighbourhood: transformation, challenges and grand strategy', *International Affairs* 92: 4, July 2016, pp. 835–48.

³⁶ Yun Sun, 'How the international community changed China's Asian Infrastructure Investment Bank', *The Diplomat*, 31 July 2015, citing China's finance minister, <http://thediplomat.com/2015/07/how-the-international-community-changed-chinas-asian-infrastructure-investment-bank/>. See also Zhang Yunling, 'China and its neighbourhood'.

³⁷ Malcolm Cook, 'Two Asias: AIIB vs ADB', *Straits Times*, 5 June 2015, <http://www.straitstimes.com/opinion/two-asias-aiib-v-adb>. See also Tom Wright, 'With development bank, China challenges Japan's role in Asia', *Wall Street Journal*, 24 March 2015, <http://www.wsj.com/articles/with-development-bank-china-challenges-japans-role-in-asia-1427197698>.

³⁸ Bishal Chalise, 'AIIB to unlock South Asia's economic potential', *East Asia Forum*, 9 March 2016, <http://www.easiaforum.org/2016/03/09/aiib-to-unlock-south-asias-economic-potential/>; Alex Blomfield and Mona Katigbak, 'The Asian Infrastructure Investment Bank—shaping development', *Energy Law Exchange Blog*, King & Spalding LLP, 8 May 2015, <http://www.energylawexchange.com/the-asian-infrastructure-investment-bank-shaping-development/>.

³⁹ As in the original MoU establishing the bank, signed Oct. 2014.

28 of the AoA, China's voting rights still amount to over 26 per cent of total voting power.⁴⁰ This technically gives China the numerical power to veto major decisions requiring a super majority vote (75 per cent) of the board of governors or board of directors.⁴¹ While the expectation is that China's voting power will be further reduced as new members continue to join the bank, it remains true that China has a variety of strategies it can use to ensure that its key priorities and interests are not thwarted by AIIB decision-making processes.⁴²

The greatest degree of uncertainty about what influences AIIB decision-making will occur in the early stages of the bank's operations. Eventually, patterns of allegiances and power relations between members should emerge, ensuring a greater degree of predictability. However, the fluidity of relationships among regional members as they deal with political, economic and social stresses, and tensions between EU member states during Brexit negotiations, mean that allegiances are likely to shift, both over time and in respect of different issues.

The AIIB board of directors is headed by the bank president acting as chairman. In that role, the president has no vote, apart from a deciding vote in case of an equal division (article 29.3). Current president Jin Liqun is from China, but future presidential terms are open to candidates from any regional member state (AoA, article 29). The bank's five vice-presidents currently come from both developed and developing nations (UK, India, South Korea and Indonesia), and the World Bank.⁴³ The (non-resident)⁴⁴ board of directors meets regularly to establish and oversee the rules and policies guiding the operations of the bank, while delegating daily operational functions to the president and management of the bank (AoA article 26).

Bilateralism has been a feature of China's engagement with regional partners in the establishment of the AIIB, as in other areas of foreign policy. While ASEAN has legal capacity to sign international legal instruments as a single entity, this has not occurred for AIIB purposes. Instead, each of the ten ASEAN states has signed up to AIIB membership separately, and the ASEAN ten will not be voting as a bloc on the AIIB's twelve-strong board of directors. Singapore has formed a voting constituency together with Australia, New Zealand and Vietnam,⁴⁵ while Brunei

⁴⁰ Fu Jing, 'AIIB chief rules out Chinese veto power', *China Daily Europe*, 27 Jan. 2016, http://europe.chinadaily.com.cn/business/2016-01/27/content_23273436.htm; Inclusive Development International, *Making inroads: Chinese infrastructure investment in ASEAN and beyond* (Asheville, NC, Aug. 2016), pp. 24–5, <http://www.inclusivedevelopment.net/wp-content/uploads/2016/08/Making-Inroads-China-Infrastructure-Finance.pdf>; Sun, 'How the international community changed China's Asian Infrastructure Investment Bank'.

⁴¹ AIIB, AoA, arts 26 and 28.

⁴² On China's priorities and interests, see Jinghan Zeng, Yuefan Xiao and Shaun Breslin, 'Securing China's core interests: the state of the debate in China', *International Affairs* 91: 2, March 2015, pp. 245–66.

⁴³ Danny Alexander, former Chief Secretary to the UK Treasury, also serves as AIIB corporate secretary. Kyttack Hong, chairman and CEO of the Korean Development Bank, also serves as AIIB chief risk officer. Joachim von Amsberg, vice-president of development finance at the World Bank, serves as AIIB vice-president of policy and strategy. Indonesia's Luky Eko Wuryanto serves as vice-president and chief administration officer. Vice-president D. J. Pandia of the Indian Administrative Service (IAS) also serves as AIIB chief investment officer.

⁴⁴ Unlike the ADB which has a board permanently established and present in Manila, the AIIB board has no permanent seat or residence in Beijing. See Robert M. Orr, 'Why the Asian Infrastructure Investment Bank needs resident directors', *chinadialogue*, 23 August 2016. <https://www.chinadialogue.net/article/show/single/en/9206-Why-the-Asian-Infrastructure-Investment-Bank-needs-resident-directors>.

⁴⁵ Represented by Director Christopher Legg (Australia), an experienced Treasury official and former representative of Australia on the boards of the World Bank and the IMF.

will be casting its vote together with Georgia, the Kyrgyz Republic, Pakistan and Turkey.⁴⁶ Indonesia will be casting its vote together with Cambodia, Laos and Myanmar.⁴⁷ Malaysia, the Philippines and Thailand are represented by Director Baikuntha Aryal, who also votes on behalf of the Maldives and Nepal.⁴⁸ While this distribution of voting alliances may seem to detract from, rather than enhance, the central position of ASEAN, it does not actually prevent the ASEAN nations from casting their votes as a group should they so wish. In fact, it probably helps to ensure that within the AIIB, ASEAN nations will continue to operate much as they do in other contexts—in accordance with the ‘ASEAN way’, through norms of sovereignty and non-interference, consultation and consensus.⁴⁹

Given south-east Asia’s high level of need for infrastructure finance, ASEAN states are expected to be major beneficiaries of AIIB funding. It remains to be seen, however, what influence, if any, ASEAN as a coherent international identity will wield in the evolution of AIIB norms and practices. ASEAN centrality to AIIB decision-making will be strengthened by the key position of maritime south-east Asia in realizing China’s maritime Silk Road strategy, and by the Asian Regional Comprehensive Partnership (RCEP) agreement that is being negotiated among the ASEAN + 6 (Australia, New Zealand, China, Japan, Korea and India), which is premised on ASEAN centrality.

ASEAN’s central position in the AIIB is further reinforced by the establishment in 2015 of the ASEAN Community, which has strengthened ASEAN’s confidence in its identity as a regional and international actor.⁵⁰ Much of this confidence derives from emerging ASEAN Community infrastructure, including the Master Plan of ASEAN Connectivity (MPAC) and its hard and soft infrastructure project priorities,⁵¹ supported by the ASEAN + 3 (China, Japan, Korea) Macroeconomic Research Office (AMRO) (focusing on economic intelligence and surveillance).⁵² MPAC and AMRO could each draw support from the AIIB, as could regional development funds such as the Philippines’ Project Development and Monitoring Fund and the Indonesian Infrastructure Guarantee Fund.

What may well prove more important than China’s ability to control AIIB decision-making is its ability to finance projects that complement AIIB-financed

⁴⁶ Represented by Director Hakan Tokac (Turkey).

⁴⁷ Represented by Director Andin Hadiyanto (Indonesia).

⁴⁸ AIIB website, AIIB Governance, Board of Directors, <https://www.aiib.org/en/about-aiib/governance/board-directors/index.html>.

⁴⁹ Paruedee Nguitragool and Jurgen Rüland, *ASEAN as an actor in international fora: reality, potential and constraints* (Cambridge: Cambridge University Press, 2015).

⁵⁰ Eric C. Ip, *The power of international legal personality in regional integration*, UNU-CRIS working paper W-2010/4 (Bruges: United Nations University Comparative Regional Integration studies, 2010), <http://www19.iadb.org/intalcdi/PE/2010/06331.pdf>; National University of Singapore, Centre for International Law, *Workshop on implementing legal personality and privileges and immunities*, CIL ASEAN Charter Series 2010, 16 Aug. 2010, http://cil.nus.edu.sg/wp/wp-content/uploads/2011/02/Workshop-Report_CIL-ASEAN-Charter-Series-FINAL.pdf.

⁵¹ ASEAN, *Master Plan on ASEAN Connectivity* (Jakarta, Dec. 2010, repr. Jan. 2011), http://www.asean.org/storage/images/ASEAN_RTK_2014/4_Master_Plan_on_ASEAN_Connectivity.pdf; ASEAN Connectivity project information sheets, Aug. 2012, <http://www.asean.org/wp-content/uploads/images/pdf/publications/asean%20connectivity.pdf>.

⁵² Ramon Pacheco Pardo, ‘A strong ASEAN+3 should embrace the IMF’, *East Asia Forum*, 9 May 2016, <http://www.eastasiaforum.org/2016/05/09/a-strong-asean3-should-embrace-the-imf/>.

projects in ways that serve China's domestic interests. For example, both the Paunglaung hydropower station, for which China Exim Bank provided seed finance in 2008,⁵³ and the Myingyan Gas Turbine Power Plant project, co-financed by the AIIB, the International Finance Corporation (IFC) and the ADB,⁵⁴ serve to counter India's growing influence in the strategically located south-east Asian nation of Myanmar (Burma).⁵⁵

Another bilateral relationship key to China's economic and strategic interests is that with Pakistan. In April 2015, President Xi and Prime Minister Nawaz Sharif agreed on a US\$46 billion infrastructure finance plan, largely devoted to the construction of the 3,000-kilometre China–Pakistan Economic Corridor, linking Kashgar (in China's Xinjiang Province) with Gwadar in Pakistan (Baluchistan), a deep-sea port on the Arabian Sea constructed and controlled by China under a 40-year lease agreement. The finance plan, equal to about 20 per cent of Pakistan's GDP, includes Chinese concessional loans for three highway projects and an international airport, and co-financing from China Exim Bank, China Development Bank and the Industrial Commercial Bank of China for a variety of renewable and coal-fired energy projects.⁵⁶ The China–Pakistan Economic Corridor vision is complemented by two AIIB-financed projects: the Pakistan Tarbela 5 Hydropower Extension Project⁵⁷ and the Pakistan National Motorway M-4 Project (Shorkot–Khanewal section).⁵⁸

In central Asia, China's OBOR initiative is also catalysing the building of soft ties in the form of legal and trade-related relationships. In July 2016, China became the 70th country to ratify the UN TIR Convention on international transport of goods by road.⁵⁹ The TIR Convention, administered by the International Road Transport Union, should eventually allow accredited trucks to travel from China through central Asia to Europe, without time-consuming customs checks and lengthy border delays.⁶⁰ China's entry into the TIR is an important step in

⁵³ Zhu Zhenming, 'China's economic aid to CLMV and its economic cooperation with them', in Mitsuhiro Kagami, ed., *A China–Japan comparison of economic relationships with the Mekong River basin countries*, research report no. 1 (Bangkok Research Center, IDE-JETRO, Chiba, Japan, 2009), p. 79, <http://www.ide.go.jp/English/Publish/Download/Brc/or1.html>.

⁵⁴ Chuanzhi Su, *Myingyan 225 MW combined cycle gas turbine (CCGT) power plant project, Myanmar*, AIIB website, Sept. 2016, https://www.aiib.org/en/projects/approved/2016/_download/myingyan/approved_project_summary_myingyan_gas_turbine.pdf.

⁵⁵ Atsuko Mizuno, 'Are India's plans in Myanmar a pipeline or a pipe dream?', *East Asia Forum*, 31 March 2017, <http://www.eastasiaforum.org/2017/03/31/are-indias-plans-in-myanmar-a-pipeline-or-a-pipe-dream/>.

⁵⁶ 'China's Xi Jinping agrees \$46bn superhighway to Pakistan', BBC News, 20 April 2015, <http://www.bbc.com/news/world-asia-32377088>; Sabrina Snell, *China's development finance: outbound, inbound, and future trends in financial statecraft*, US–China Economic and Security Review Commission staff research report no. 16 (United States Government Publishing Office, Dec. 2015), pp. 28–9, <https://www.uscc.gov/sites/default/files/Research/China%E2%80%99s%20Development%20Finance.pdf>.

⁵⁷ Approved for financing on 27 Sept. 2016; project documents available at <https://www.aiib.org/en/projects/approved/2016/pakistan-tarbela-5.html>.

⁵⁸ Approved for financing on 24 June 2016; project documents available at <https://www.aiib.org/en/projects/approved/2016/pakistan-national-motorway.html>.

⁵⁹ IRU, 'China ratifies UN TIR Convention with new trade prospects in view', *IRU News*, 26 July 2016, <https://www.iru.org/resources/newsroom/china-ratifies-un-tir-convention-new-trade-prospects-view>.

⁶⁰ UN Economic Commission for Europe, Customs Convention on the International Transport of Goods under cover of TIR Carnets (TIR Convention 1975), ECE/TRANS/TIR/6/Rev.10, https://www.unece.org/fileadmin/DAM/tir/handbook/english/newtirhand/TIR-6Rev10_En.pdf.

harmonizing standards for road transport and boosting trade across Eurasia.⁶¹ TIR countries neighbouring China include Afghanistan, Kazakhstan, Kyrgyzstan, Mongolia, Russia and Tajikistan. Pakistan is also in the process of implementing TIR after ratifying the convention in 2015. TIR is just part of the soft infrastructure of trade relations that will underpin OBOR; that soft infrastructure depends on a unity of understanding and purpose, making China just as dependent upon its neighbours as they are upon it.

In south Asia, China's desire to develop advantageous bilateral relationships will also need to take third-country interests into account. India is just one of many countries coming to the AIIB with historical baggage—including distrust of both Pakistan and China on border and strategic issues. The proposed China–Pakistan Economic Corridor, for example, runs through Pakistan-occupied Kashmir and Gilgit-Baltistan, both considered by Delhi to be Indian territories.⁶² When India agreed to join the AIIB, its government pushed for a provision in the bank's AoA requiring project financing in disputed territory to be subject to the agreement of all disputants.⁶³ The AIIB's operational policy on international relations (OPIR), addressing sensitive issues of international relations arising in relation to projects in disputed areas, was approved on 21 March 2017. It provides that AIIB financing will be approved for a project in territory claimed by two or more countries only if the bank 'is satisfied that each of the governments concerned agrees that, pending settlement of the dispute, the Financing may proceed without prejudice to its claims to the disputed area'.⁶⁴ Financing for projects involving an international waterway may proceed only with the agreement of all riparian states, or if the bank 'is satisfied that the project will not have a Material Adverse Effect on the other riparians'.⁶⁵ It remains to be seen how much flexibility and room for interpretation the wording of its OPIR will provide in future AIIB decision-making.

A central finding of Chorev⁶⁶ and other scholars applying recursivity theory to legal change is that recursive norm-making operates not only through transnational/transnational or transnational/national cycles of engagement, but also through state-to-state cycles of engagement. This insight makes recursivity theory an important interpretative tool for observers of the interactions (both cooperative and combative) taking place within the AIIB, for example in the formation of internal AIIB norms and procedures. Right from the formation of its AoA, the

⁶¹ Tom Miles, 'China joins trucking treaty, stepping onto a new silk road', Reuters Business News, Geneva, 26 July 2016, <http://www.reuters.com/article/us-china-silkroad-idUSKCN1060XC>.

⁶² Pradeep Taneja, 'India's response to China's "one belt, one road" initiative', presentation at the Australian Institute of International Affairs, East Melbourne, 12 July 2016, <http://www.internationalaffairs.org.au/events/indias-response-to-chinas-one-belt-one-road-initiative/>; Peter Cai, 'Why India distrusts China's One Belt One Road initiative', *The Interpreter*, 2 Sept. 2016, <https://www.lowyinstitute.org/the-interpreter/why-india-distrusts-chinas-one-belt-one-road-initiative>.

⁶³ Cai, 'Why India distrusts China's One Belt One Road initiative'.

⁶⁴ Operational policy on international relations, clause 4.1. See also AIIB, Operational policy on financing, adopted by the board 17 Jan. 2016, clause 3.6.1, <https://www.aiib.org/en/policies-strategies/operational-policies/operational-policy-financing.html>.

⁶⁵ AIIB, operational policy on international relations, 21 March 2017, clause 3.1, https://www.aiib.org/en/policies-strategies/_download/operational-policy-on-international-relations/operational-policy-on-international-relations.pdf.

⁶⁶ Chorev, 'Changing global norms through reactive diffusion'.

AIIB's internal rules and processes have been forged through negotiation.⁶⁷ Similar dialogue between the bank and its members, and between individual member states, also occurs in the forging and implementation of individual project agreements. Future observers of AIIB project implementation should be particularly attuned to the nature and effects of actor mismatch, the fourth of Halliday and Carruthers's recursive mechanisms, referring to the mismatches that occur when there is a disparity between actors participating in the norm-making process and those responsible for implementing those norms.⁶⁸ Particularly in the early stages, partner IFIs are also having a great deal of influence in the formation and implementation of individual AIIB project agreements.

Perspective three: new partnerships and contested multilateralism in global development finance

The AIIB's operational policy on financing begins by restating the bank's desire to promote 'regional cooperation and partnership in addressing development challenges by working in close collaboration with other multilateral and bilateral development institutions'. Its first 18 months have accordingly been devoted not only to building internal AIIB governance structures, but also to forging a network of global alliances with other development finance institutions. These alliances now form part of an increasingly integrated network of cooperative arrangements aimed at mobilizing resources (public and private) to fill development finance gaps.⁶⁹

On 2 May 2016, during the 49th annual meeting of the ADB's board of governors, AIIB president Jin Lique and ADB president Takehiko Nakao signed a memorandum of understanding (MoU) on jointly financed projects.⁷⁰ Established in 1966, the ADB is owned by 67 member nations—48 from the Asian region. In 2015 the ADB handled around US\$6 billion in funding to support climate change mitigation and adaptation projects, including US\$500 million raised from the bank's first green bond issue. Also in 2015, the ADB became the first multilateral development bank accredited to receive financing from the GCF for climate change mitigation and adaptation projects.⁷¹ This status potentially allows the ADB to act as a conduit for channelling funds from the GCF to GCF-compliant infrastructure projects co-financed with the AIIB.

AIIB's co-financing agreement with the World Bank Group was signed on 13 April 2016.⁷² The agreement outlines parameters for AIIB-World Bank co-financed investment projects, paving the way for jointly developed transport, water and

⁶⁷ Geraldine Doogue interviewing Jin Lique, 'The president of the AIIB in Australia', ABC Radio National (Sydney), 8 April 2017.

⁶⁸ Halliday and Carruthers, 'The recursivity of law', *American Journal of Sociology* 112: 4, January 2007, pp. 1135–1202, at pp. 1150–1; Halliday, 'Recursivity of global normmaking', pp. 277–8.

⁶⁹ See e.g. World Bank Global Infrastructure Facility, <http://www.worldbank.org/en/programs/global-infrastructure-facility>.

⁷⁰ ADB, 'ADB, AIIB sign MoU to strengthen cooperation for sustainable growth', press release, 2 May 2016, <https://www.adb.org/news/adb-aiib-sign-mou-strengthen-cooperation-sustainable-growth>.

⁷¹ ADB, 'Green Climate Fund accredits ADB to tap key finance for Asia-Pacific', press release, 25 March 2015, <https://www.adb.org/news/green-climate-fund-accredits-ADB-tap-key-finance-asia-pacific>.

⁷² Signed by AIIB president Jin Lique and World Bank Group president Jim Yong Kim.

energy projects throughout Asia. The agreement provides for the World Bank to prepare and supervise co-financed projects in accordance with World Bank procedures and guidelines.

An MoU between the AIIB and the European Bank for Reconstruction and Development (EBRD),⁷³ and a framework agreement for cooperation between the AIIB and the European Investment Bank (EIB),⁷⁴ were both signed in May 2016. The AIIB–EIB relationship is particularly important, given the strong history of cooperation and sharing of financial and technical expertise between the parties, and given the EIB's leading role in the green bond market and climate-related finance.⁷⁵

On 24 June 2016 the board of directors approved the AIIB's first four loan projects totalling US\$509 million. They include Pakistan's M4 highway project—specifically, a 64-kilometre stretch of motorway connecting Shorkot to Khanewal in Punjab Province (US\$100 million)—and an expressway connecting Dushanbe, the capital of Tajikistan, to the border of Uzbekistan (US\$27.5 million). There is also a national slum-upgrading project in Indonesia (US\$216.5 million) and a power distribution upgrade and expansion project in Bangladesh. Later in 2016, the board approved a hydropower extension project (Tarbela 5) in Pakistan, a power plant project (Myingyan) in Myanmar, funding for the Trans-Anatolian Natural Gas Pipeline (Azerbaijan), and two projects in Oman: the Duqm Port commercial terminal and operational zone development project and a smaller railway system preparation project. This brought the total of approved AIIB financing as at the end of 2016 to around US\$1.13 billion.⁷⁶ Projects approved for finance in March 2017 include a natural gas infrastructure and efficiency improvement project in Bangladesh (co-financed with, and led by, the ADB), phase II of a dam operational improvement and safety project in Indonesia (co-financed with, and led by, the World Bank) and a regional infrastructure development fund project, also in Indonesia, and also co-financed with, and led by, the World Bank. On 2 May 2017, the AIIB board approved financing for an electricity access project in Andhra Pradesh, India, co-financed with and led by the World Bank.

Most of the AIIB's inaugural ventures have been directed to countries that remain close to China geopolitically. Pakistan is one of China's closest Asian partners, while Tajikistan and Uzbekistan are members of the SCO. Concerns that funded projects reflect China's geopolitical priorities to an undue extent are alleviated by the fact that most projects so far are led by partner development banks and not by the AIIB itself.

In Pakistan, the Tarbela 5 hydropower extension project is co-financed by the World Bank, while the ADB is the lead financing partner for the Shorkot–Khanewal motorway project, and administers it on behalf of the other co-finan-

⁷³ AIIB, 'Asian Infrastructure Investment Bank to cooperate with European Bank for Reconstruction and Development', press release, 11 May 2016, https://www.aiib.org/en/news-events/news/2016/20160511_001.html.

⁷⁴ EIB, 'EIB and Asian Infrastructure Investment Bank agree to strengthen cooperation', press release, 30 May 2016, <http://www.eib.org/infocentre/press/releases/all/2016/2016-130-eib-and-asian-infrastructure-investment-bank-agree-to-strengthen-cooperation.htm>.

⁷⁵ EIB, 'EIB issues first green bond of 2016', press release, 6 Jan. 2016, http://www.eib.org/investor_relations/press/2016/fi-2016-002-eib-issues-first-Green-Bond-of-2016.htm?lang=en.

⁷⁶ AIIB website, 'Approved projects', <https://www.aiib.org/en/projects/approved/index.html>.

ciers—the AIIB and the UK's Department for International Development. ADB policies and procedures apply,⁷⁷ with one exception. Under its guidelines, the AIIB can only fund projects open to companies from all countries, while the ADB usually restricts participation to bidders from its member nations. For the Shorkot–Khanewal motorway project, the ADB and the Pakistan government have agreed to widen procurement eligibility to all countries.⁷⁸ A recursive process of negotiated agreement has allowed both IFIs to accept a combination of each other's policies and practices.

As of May 2017, the AIIB acts as sole financier in only two cases: the project loan for power distribution and expansion in Bangladesh,⁷⁹ and the port terminal and railway preparation projects in Oman.⁸⁰ Moreover, of the 13 projects proposed for approval in the second half of 2017, seven are based in India—possibly to compensate for India's reluctance so far to participate in China's OBOR initiative. At least two of the India-based projects would be co-financed with the World Bank, while a third project, if approved, would be co-financed by the ADB. The ADB is also named as co-financier for a proposed water security project in Sri Lanka, and a road project in Georgia, while the World Bank would be co-financier for a proposed flood management project in the Philippines. The EBRD would be co-financier for proposed renewable energy projects in Kazakhstan (also an SCO member) and Georgia.⁸¹

As Bazbauers and Engel point out, with this selection of projects the AIIB is balancing its messages to different groups.⁸² The dominance of co-financed projects signals the bank's willingness to cooperate with more experienced partners in ensuring that environmental standards and financial soundness criteria are met. Meanwhile, partner IFIs are happy to tap into the AIIB's US\$100 billion of capital to facilitate large-scale projects, allowing them to save their own funds for alternative projects. Geographically, central Asian projects are balanced by projects in south and south-east Asia. A project preparation special fund, backed by a US\$50 million start-up contribution from China, has also been established to assist low- and middle-income countries in project preparation. This should help the AIIB compete with other multilateral development banks (MDBs) for loans to low-income countries, despite not having a highly concessional lending arm.⁸³

⁷⁷ Project document, Pakistan National Motorway M-4 (Shorkot–Khanewal section), 6 June 2016, p. 5, https://www.aiib.org/en/projects/approved/2016/_download/pakistan-national-motorway/document/approved_project_document_pakistan_national_motorway.pdf; Tom Mitchell and Jack Farchy, 'China's AIIB seeks to pave new Silk Road with first projects', *Financial Times*, 19 April 2016, <https://www.ft.com/content/a36afodo-05fc-11e6-9b51-0fb5e65703ce>.

⁷⁸ Project document, Pakistan National Motorway M-4 (Shorkot–Khanewal section); Mitchell and Farchy, 'China's AIIB seeks to pave new Silk Road with first projects', *Financial Times*, 19 April 2016, <https://www.ft.com/content/a36afodo-05fc-11e6-9b51-0fb5e65703ce?mhqsj=e1>.

⁷⁹ President's report to the AIIB board of governors, 2016 annual meeting, Beijing, 25 June 2016, https://www.aiib.org/en/news-events/news/2016/20160625_002.html.

⁸⁰ AIIB website, project documentation, approved projects, <https://www.aiib.org/en/projects/approved/index.html>. The Oman projects were approved by the AIIB board in early Dec. 2016.

⁸¹ For details of proposed projects, see AIIB website at <https://www.aiib.org/en/projects/proposed/index.html>.

⁸² Adrian Bazbauers and Susan Engel, 'The new multilateral development banks', *Australian Outlook*, 27 July 2016, http://www.internationalaffairs.org.au/australian_outlook/the-new-multilateral-development-banks/.

⁸³ Bazbauers and Engel, 'The new multilateral development banks'; President's report to the AIIB board of governors, 2016 annual meeting, Beijing, 25 June 2016.

It is not surprising that at this early stage in its existence the AIIB is focusing on cooperative project financing, rather than sole-financed projects. By initially focusing on projects led by other IFIs, the AIIB can build up an investment portfolio and a track record, and gain experience in development finance, faster than would be possible if it acted on its own. At the same time, the AIIB, as a new institution, is likely to prove less bureaucratic and more flexible in responding to client needs than more established institutions such as the World Bank Group or the ADB, with their layers of bureaucracy built up over decades.

Morse and Keohane, and Hilmarsson, apply theories of 'contested multilateralism' to newly emerging multilateral institutions, including the AIIB. According to Hilmarsson,

contested multilateralism involves the use of different multilateral institutions to challenge the rules, practices, or missions of existing multilateral institutions. More precisely, the phenomenon of contested multilateralism occurs when states and/or non-state actors either shift their focus from one existing institution to another or create an alternative institution to compete with existing ones.⁸⁴

In the case of the AIIB, contested multilateralism means a two-way (recursive) process of institutional dialogue between the AIIB and its IFI partners. The need to forge agreements with other IFIs has required the AIIB to ensure a minimum degree of conformity between its own norms and those of its more established partners. As the more detailed aspects of AIIB norms and practices emerge, recursivity theory will facilitate an understanding of how, and to what extent, these norms and practices are shaped to maximize ambiguity, flexibility and room for manoeuvre in future internal and external negotiations. The AIIB may also begin to influence change within partner institutions.

Established IFIs have sought to remain relevant in the face of challenges to conventional development finance practices by emphasizing transfer of experience, knowledge, access to opportunities and the management of global public goods.⁸⁵ In its country partnership report for China for the period 2013–2016, for example, the World Bank envisions playing a critical role in 'supporting China's South–South Cooperation' through technical assistance and the facilitation of strategic private-sector investment. It notes that the World Bank group can help Chinese firms expand into international markets by 'sharing global experience in adopting and implementing standards for outward investment', as well as by 'exploring opportunities for project-level cooperation in third countries'.⁸⁶

⁸⁴ Hilmar Hilmarsson, *International financial institutions, climate change and the urgency to facilitate clean energy investment in developing and emerging market economies* (New York: Nova, 2016), p. 69; Julia C. Morse and Robert O. Keohane, 'Contested multilateralism', *Review of International Organizations* 9: 4, 2014, pp. 385–412, <http://www.princeton.edu/~rkeohane/publications/PublishedCM.pdf>.

⁸⁵ Snell, *China's development finance*, pp. 42–3.

⁸⁶ World Bank, *IBRD, IFC and MIGA country partnership strategy for the People's Republic of China for the period of FY2013–FY2016* (Washington DC, 11 Oct. 2012), p. 30.

Perspective four: forging a relationship with the Green Climate Fund

The GCF is the financing mechanism established in 2010 by the UN Framework Convention on Climate Change (UNFCCC) to support climate change mitigation and adaptation.⁸⁷ By 2015, 32 countries, including seven developing nations, had pledged an initial US\$10.2 million to the fund, with the largest contributions pledged by the United States, Japan, France and Germany.⁸⁸ The GCF allocates its resources equally to adaptation and mitigation efforts, with half of all adaptation funds allocated to developing small island states and least developed countries.

By December 2016, 41 national and international financial institutions (entities) were fully accredited as GCF funding institutions, while a further 78 entities had accreditation applications under Stage I or Stage II consideration and review.⁸⁹ Accredited entities are financial institutions qualified to act as vehicles through which GCF funds are channelled to projects and programmes.⁹⁰ Entities seeking accreditation to the GCF have their internal policies and operational practices assessed against three sets of standards: fiduciary standards, environmental and social safeguards, and gender policy.

In the light of its sustainable development objectives, the AIIB's interest in establishing a close working partnership with the GCF—whether or not it applies for GCF accreditation—is not unexpected. AIIB officials have confirmed that ‘partnership with the GCF is ... of considerable interest’ to the bank, but that while ‘initial contacts with the GCF Board’ have been established, it remains too early for the question of GCF accreditation to have been explored.⁹¹ In 2016, during a GCF briefing at the 22nd Conference of the Parties (COP-22) to the UNFCCC in Marrakesh, the then co-chair of the GCF board confirmed that high-level talks (at vice-presidential level) were taking place between the AIIB and the GCF about the form of future partnership alliances, which could be either direct (via the accreditation process) or indirect (via partnerships with other financial institutions, combined with enhanced AIIB–GCF complementarities).⁹²

Bringing the operational policies and procedures of the AIIB into line with GCF accreditation standards is another avenue through which international norms will shape and influence the bank, and through which the AIIB can interact with, and influence, other actors in international finance. While supporting China's constant quest for international legitimacy, it may also reduce China's freedom to selectively fund its preferred projects without regard to external criteria.

⁸⁷ www.greenclimate.fund.

⁸⁸ Michael Igoe, ‘The long and winding road to adaptation finance’, *devex*, 11 Dec. 2015, updated 14 Dec. 2015, <http://www.devex.com/news/the-long-and-winding-road-to-adaptation-finance-87484>; Michael Igoe, ‘A big week for the Green Climate Fund’, *devex*, 10 March 2016, <http://www.devex.com/news/a-refugee-break-through-and-green-climate-fund-s-next-steps-this-week-in-development-news-87865>.

⁸⁹ Green Climate Fund, ‘Getting accredited’, <https://www.greenclimate.fund/partners/accredited-entities/ae-composition>.

⁹⁰ See GCF, ‘Getting accredited’, <http://www.greenclimate.fund/how-we-work/getting-accredited/ae-composition>.

⁹¹ Email from AIIB, 1 Aug. 2016, responding to author's enquiry.

⁹² Ewan McDonald, ‘GCF update—2016 progress in supporting low emission & climate resilient development pathways’, GCF briefing at COP-22, Marrakesh, 11 Nov. 2016. See also twitter @EwanMcDonald_: Brainstorming with @jvonamsberg on possible #AIIB and #GCFund green infrastructure and clean energy projects.

The GCF's 'fit-for-purpose' approach to accreditation means that entities can be accredited for differentiated combinations of fiduciary functions (grants, loans, equities, guarantees), and for projects/activities of different sizes (micro, small, medium, large) and different levels of environmental and social risk (high, medium, low). An accreditation master agreement between the GCF and the accredited entity codifies the differentiated accredited functions and standards for each entity. Given its size and international nature, the AIIB would most likely apply for accreditation through the international access modality, and seek accreditation for the broadest range of fiduciary functions across the broadest range of projects and activities.

Fiduciary principles and standards

The AIIB is gradually establishing the institutional framework and structures required for GCF compliance in this area, but it will be several years before it can satisfy the GCF accreditation requirement that the 'operations of the entity [seeking accreditation] show a track record in effectiveness and efficiency',⁹³ evidenced by producing, *inter alia*, 'a clear and complete set of financial statements'.⁹⁴ GCF accreditation also requires compliance with a number of basic internal and external auditing requirements, including the establishment of an independent audit committee guided by written terms of reference to oversee both internal audit functions and an external audit firm. The AIIB board established the bank's audit committee in January 2017. Its membership comprises three directors and two external members, and its terms of reference include reviewing the bank's financial statements and accounting, auditing and financial reporting practices and procedures. It also reviews the selection and performance of external AIIB auditors and annual auditor's reports.⁹⁵

An organizational chart, as required for GCF accreditation,⁹⁶ has been published on the AIIB website, in accordance with the bank's public information interim policy.⁹⁷ The chart documents the establishment of an internal control framework covering risk assessment, monitoring and procedures for information-sharing. The GCF also requires that internal functions within an entity seeking accreditation are documented, and that incompatible functions are segregated (for example, separating settlement processing, procurement processing, risk management/reconciliations and accounting functions). Related duties must be subject to regular review by management, and the entity's internal control framework must ensure that a response is required when discrepancies and exceptions are noted.

⁹³ GCF, 2011, Doc. GCF/B.07/11, Annex II, Initial fiduciary principles and standards of the fund, para. 1.1.1(c), https://www.greenclimate.fund/documents/20182/319135/1.6_-_Fiduciary_Standards.pdf/083cfe10-46f4-4a73-b603-8d7bfd2a35bd.

⁹⁴ GCF, 2011, Doc. GCF/B.07/11, Annex II, para. 1.1.2(b).

⁹⁵ AIIB governance, <https://www.aiib.org/en/about-aiib/governance/board-directors/index.html#>. As of February 2017, the other two committees directly under the AIIB board of directors are the Budget and Human Resources Committee and the Policy and Strategy Committee.

⁹⁶ GCF, Annex II, 'Initial fiduciary principles and standards of the Fund', GCF/B.07/11 (2011), para. 1.1.1.2(b).

⁹⁷ For organizational structure chart, see https://www.aiib.org/en/about-aiib/governance/_common/_download/AIIB_organizational_structure.pdf.

At the time of writing (May 2017), the AIIB is in the final stages of engaging a full complement of staff, and its internal control framework and procedures are still taking shape.⁹⁸ Risk management, auditing and accountability functions are separated under different departments.⁹⁹

The AIIB's internal control framework will come under particularly close scrutiny during its early years because of the perceived susceptibility of regional economic and trade flows to manipulation by organized crime. A conservative estimate of annual organized crime revenues in east Asia and the Pacific is US\$100 billion—surpassing the GDP of Laos, Cambodia and Myanmar combined.¹⁰⁰ The risk is that some of this money will be caught up in financial flows for infrastructure development, a field known for its long funding cycles and high potential for waste and corruption. According to a recent report by the UN Office on Drugs and Crime (UNODC), one major downside of improved connectivity within ASEAN is its potential to exacerbate threats of illicit flows associated with trafficking and/or money laundering.¹⁰¹ However, coordination between regional countries is improving, particularly in respect of harmonizing operational (including communication) strategies for combating illicit flows.¹⁰²

The AIIB internal control framework as published so far includes a corporate procurement policy approved in January 2016, a policy on prohibited practices approved on 1 May 2016, and a risk management framework approved in November 2016.¹⁰³ The corporate procurement policy aims to ensure transparency and cost effectiveness for purchases of goods and services funded from the bank's administrative budget.¹⁰⁴ It applies to all AIIB personnel and stipulates open competitive tendering as the default method for all AIIB corporate procurement. If the integrity of any procurement process is affected by any conflict of interest or prohibited practice as defined in the policy on prohibited practices, the proposed procurement may be rejected. The policy on prohibited practices applies to contract counterparties of the bank, including borrowers, sponsors, investees,

⁹⁸ President's report to the AIIB board of governors, 2016 annual meeting, Beijing, 25 June 2016.

⁹⁹ Organizational structure chart, risk management framework. See <https://www.aiib.org/en/policies-strategies/operational-policies/risk-management-framework.html>.

¹⁰⁰ Danny Lee, 'United Nations highlights "one belt one road" crime risks', *South China Morning Post*, Hong Kong, 28 Feb. 2016, <http://www.scmp.com/news/hong-kong/law-crime/article/1918028/united-nations-highlights-one-belt-one-road-crime-risks>; Tan Hui Yee, 'UN warns of dark side of greater ASEAN integration', *Jakarta Post*, 26 Feb. 2016, <http://www.thejakartapost.com/news/2016/02/26/un-warns-dark-side-greater-asean-integration.html>.

¹⁰¹ UNODC, *Protecting peace and prosperity in Southeast Asia: Synchronizing economic and security agendas* (Bangkok, 25 Feb. 2016), https://www.unodc.org/documents/southeastasiaandpacific/Publications/2016/Protecting_peace_and_prosperity_in_SEA.pdf; Yee, 'UN warns of dark side of greater ASEAN integration'.

¹⁰² UNODC, *Transnational organised crime in East Asia and the Pacific: a threat assessment* (Bangkok, April 2013), https://www.unodc.org/documents/data-and-analysis/Studies/TOCTA_EAP_web.pdf; UNODC, *Drug trafficking trends and border management in Southeast Asia: responding to an evolving context of regional integration* (Vienna, 19 Nov. 2014), https://www.unodc.org/documents/ungass2016/CND_Preparations/Brown_bag_lunch/Asia/2014.11.19_CND_preparation_for_UNGASS_2016_final.pdf.

¹⁰³ AIIB risk management framework, Nov. 2016, <https://www.aiib.org/en/policies-strategies/operational-policies/risk-management-framework.html>.

¹⁰⁴ AIIB, corporate procurement policy, arts 1.1, 1.2, <https://www.aiib.org/en/policies-strategies/other-documents/corporate-procurement.html>. Not to be confused with the AIIB procurement policy, governing procurement of goods and services for projects financed by the AIIB: see <https://www.aiib.org/en/policies-strategies/operational-policies/procurement-policy.html>.

guarantee beneficiaries, advisory service providers, and suppliers of goods and services. In the case of projects financed by sovereign-backed financing, the policy applies to all parties involved in the project, including third parties involved by virtue of contracts with AIIB contract partners.

The policy on prohibited practices provides for sanctions on firms and individuals that have engaged in specified forms of fraud and corruption in connection with bank-financed projects.¹⁰⁵ AIIB officials and employees are required, and other individuals are encouraged, to report any suspected prohibited practice¹⁰⁶ of which they become aware in relation to a project. Procedural safeguards and an appeals procedure exist to safeguard the rights of respondents charged with prohibited practices.¹⁰⁷ When debarment is used as a sanction against an individual or organization, details of the debarment decision shall be published on the bank's website, and provision is made for reciprocal disclosure of relevant information to other international organizations, as well as for cross-debarment under the terms of the 2010 Agreement for Mutual Enforcement of Debarment Decisions.¹⁰⁸ This provides yet another channel for harmonization of standards across organizations.

Where there is evidence that the respondent may have violated the laws of any country, the investigations officer must refer the matter to the director general of the Compliance, Effectiveness and Integrity (CEI) Unit, who may recommend to the president that the matter be referred to appropriate governmental authorities. The first head of the AIIB CEI Unit, Mr Hamid Sharif, then the ADB's country director for China, was appointed in April 2016.¹⁰⁹ The CEI Unit will play a fundamental role in the bank's governance, with a mandate that includes monitoring and evaluating the bank's portfolio, ensuring policy compliance, and overseeing internal and external grievance procedures. The policy on prohibited practices and establishment of the CEI Unit create a framework to meet GCF requirements for (a) clear, formal management policies and provisions defining expected ethical behaviour, and (b) a clear policy for declaration of actual or potential conflicts of interest.

Infrastructure funding is known for its high risks and low returns, especially in less developed countries with volatile domestic economies and unstable governments. The AIIB will face an inherent tension between the need to ensure stable returns and the desire to fund potentially loss-making but otherwise worthy projects. The AIIB operational policy on financing (the operational policy) comprises a main text, setting out the bank's overall policy approach to assessing projects and making financing decisions, and two annexes: annex 1 ('Specific provisions applicable to sovereign-backed financing') and annex 2 ('Specific

¹⁰⁵ AIIB policy on prohibited practices, 1 May 2016, <https://www.aiib.org/en/policies-strategies/operational-policies/prohibited-practices.html>.

¹⁰⁶ Defined as any practice involving coercion, collusion for improper purposes, corruption, fraud, misuse of resources, theft and/or obstruction of investigative procedures: AIIB policy on prohibited practices, clause 3.2.

¹⁰⁷ See esp. parts V, VI and VIII of the policy on prohibited practices.

¹⁰⁸ Policy on prohibited practices, clauses 12.1, 12.6 and 12.7. For a copy of the Agreement for Mutual Enforcement of Debarment Decisions, see <https://www.adb.org/sites/default/files/institutional-document/32774/files/cross-debarment-agreement.pdf>.

¹⁰⁹ AIIB, 'Mr Hamid Sharif appointed as director general of the Compliance, Effectiveness and Integrity Unit', press release, 14 April 2016, https://www.aiib.org/en/news-events/news/2016/20160414_001.html.

provisions applicable to non-sovereign-backed financing'). Projects seeking finance are assessed according to criteria set out in article 3.3 of the operational policy, including a technical assessment, economic and financial (viability and cost–benefit) assessment, legal (due diligence) assessment, integrity and management assessment, and environmental and social assessment.¹¹⁰

The AIIB's public information interim policy (PIIP) was published in January 2016. The Global Transparency Initiative's Transparency Charter for International Financial Institutions¹¹¹ requires that an IFI's public information disclosure policy should ideally include (a) a presumption in favour of disclosure with limited exceptions, (b) a clear framework for processing requests for information, and (c) a right of appeal to an independent body. At present, however, the PIIP contains an extensive list of exceptions, and broad deference to confidentiality claims made by related third parties. Entire categories of information are subject to confidentiality claims, without any counterbalancing 'public interest' test to override such claims. The PIIP provides for annual review of the AIIB's public information policies, and it remains to be seen whether future revisions of the 'interim' policy will broaden stakeholder access to project-related and other information.

The GCF's information disclosure policy¹¹² includes a presumption in favour of disclosure,¹¹³ a framework for processing requests for information¹¹⁴ and an appeal mechanism.¹¹⁵ Exceptions to the presumption in favour of disclosure primarily concern personal information, internal communications and information provided to the GCF in confidence (clause 11). Clause 12 of the policy allows the GCF to override such exceptions if the benefit to be derived would outweigh the potential harm of disclosing the information. All environmental reports required under GCF guidelines, and all monitoring and evaluation reports, must be posted on the website of the relevant accredited entity as well as the GCF website.¹¹⁶

Environmental and social safeguards

The AIIB published a 35-page consultation draft of its environmental and social framework (ESF) on 3 August 2015; the final (54-page) version of the ESF was published in February 2016. The brief six-week consultation period held prior to the adoption of the final version was carried out entirely in English, and relied heavily on video conferences.¹¹⁷

¹¹⁰ See also AIIB, AoA, art. 31, para. 2, <https://www.aiib.org/en/about-aiib/basic-documents/articles-of-agreement/index.html>.

¹¹¹ Available at http://www.ifitransparency.org/doc/charter_en.pdf.

¹¹² GCF information disclosure policy, annex XXIX, GCF/B.12/32, agenda item 22, decision B.12/35, http://www.greenclimate.fund/documents/20182/319135/GCF_Information_Disclosure_Policy.pdf/3f725d99-85e9-4d1d-a9c-2f7ad539e4e6.

¹¹³ GCF information disclosure policy, clause 6, principle 1.

¹¹⁴ GCF information disclosure policy, clauses 22–6.

¹¹⁵ GCF information disclosure policy, clauses 28–37.

¹¹⁶ GCF information disclosure policy, clauses 16 and 17, part X, summary of disclosure standards for key GCF document.

¹¹⁷ Joshua Rosenzweig, 'The AIIB and human rights', *The Diplomat*, 24 June 2016, <http://thediplomat.com/2016/06/the-aiib-and-human-rights/>.

The ESF sets out the bank's mandatory environmental and social (E&S) requirements for each project financed or co-financed by the bank (the E&S policy: hereafter ESP), as well as more detailed requirements relating to E&S assessment and management, involuntary resettlement and indigenous peoples. The ESF contains standards broadly similar to those of the World Bank, the ADB and other IFIs. Progressive areas include the exclusion of financing for commercial logging operations in tropical or old-growth forests, which goes beyond current World Bank standards. The most noticeable gaps include the failure to give indigenous peoples the right to consent to activities taking place on their lands—a right expressly recognized in E&S guidelines issued by both the IFC and the ADB.¹¹⁸

An energy strategy discussion draft issued by the AIIB in January 2017 contains specific references to the UN's Sustainable Energy for All (SE4ALL) initiative (launched in 2011), the 2015 Sustainable Development Goals (SDGs)—particularly SDG 7 on access to sustainable energy—and the Paris Agreement signed during COP-21 in December 2015. It emphasizes promotion of energy access and security, realization of energy efficiency, reduction in the carbon intensity of energy supply, management of pollution locally and regionally, and the need to catalyse private capital and promote regional cooperation.

The fact that the ESF was one of the first policy documents to be issued by the AIIB is a positive sign. So also is the fact that the influence of the ESP on the bank's decision-making processes is guaranteed through specific clauses in both the general conditions for sovereign-backed loans¹¹⁹ and the operational policy on financing¹²⁰ requiring compliance with AIIB E&S policy guidelines. As the AIIB begins funding infrastructure projects, however, it will need to do more to facilitate communication with project-affected communities speaking a multiplicity of languages and having varying degrees of literacy and access to technology.

Gender policy

The AIIB has no separate gender policy, and there is only sparse reference to gender equity in its governance documents. The staff regulations of the AIIB provide that the bank 'shall strive to provide employment opportunities open to all suitably qualified applicants, regardless of religion, gender, race, disability, sexual orientation or nationality' (article 5). The bank's code of conduct for its personnel (approved on 16 January 2016) expressly incorporates principles of equality and non-discrimination on grounds such as gender (clause 9), as well as non-tolerance of sexual harassment (clause 13).¹²¹

¹¹⁸ Gaia Larsen and Sean Gilbert, *Asian Infrastructure Investment Bank releases new environmental and social standards: how do they stack up?* (Washington DC: World Resources Institute, 4 March 2016), <http://www.wri.org/blog/2016/03/asian-infrastructure-investment-bank-releases-new-environmental-and-social-standards>.

¹¹⁹ AIIB, general conditions for sovereign-backed loans, 1 May 2016, art. IV, sec. 4.01(b), project execution, <https://www.aiib.org/en/policies-strategies/operational-policies/sovereign-backed-loans.html>.

¹²⁰ AIIB, operational policy on financing, Jan. 2016, arts 3.1.3(d) (operating principles); 3.3.1(d) (assessment of the project); 3.4.1(c) (financing terms and conditions); and 3.5.6 ('The Bank pays particular attention to failures to comply with environmental, social ... [and fiduciary] obligations').

¹²¹ AIIB, code of conduct for bank personnel, https://www.aiib.org/en/about-aiib/basic-documents/_download/

The AIIB ESF includes, as part of its vision statement, a declaration of the importance of gender equality considerations in client operations and projects (clause 13). Gender considerations are also found in standards for environmental and social assessment and risk management adopted by the World Bank and other partner MDBs, as applied to most of the AIIB's co-financed projects approved so far.

The relevance of AIIB–GCF cooperation

Forging an alliance with the GCF and exploring the possibility of GCF accreditation are longer-term agenda items for the AIIB, but important ones—not least as part of AIIB's bid for international legitimacy. As its relationship with the GCF develops, the AIIB will seek to ensure that rules of engagement remain sufficiently indeterminate and flexible for it to retain a comfortable degree of autonomous control over its own decision-making and internal processes. Negotiations may continue for many years to come.

China's desire to exercise discretion in social policy and legal institution-building (in particular, the building of independent oversight institutions, securities and prudential regulatory authorities, courts and tribunals, etc.) domestically limits the potential for its own domestic financial institutions to become GCF-accredited entities. This, in turn, provides an incentive for China to encourage and support institutional engagement with the GCF through the AIIB—at one remove from its domestic economy and legal system. Seen thus, AIIB–GCF cooperation provides a more than acceptable vehicle for enhancing China's legitimacy globally without intruding to an undesirable degree upon its ability to control its own political, legal and economic future domestically.

Conclusion: institutional recursivity—a way forward

The theme of the AIIB's June 2016 annual meeting was 'partnership for infrastructure development'. The event attracted hundreds of development leaders, civil society representatives and private-sector players.¹²² The president's address stressed the 'strong collaborative partnerships' being forged by the AIIB, and the attention being paid to establishing 'core institutional, financial and operational policies', together with a 'robust risk management framework' to ensure the bank's 'smooth functioning'. However, as a number of civil society groups noted,¹²³ concerns

code-of-conduct/basic_document_code_of_conduct_personnel.pdf.

¹²² See Georg Inderst, *Infrastructure investment, private finance, and institutional investors: Asia from a global perspective*, ADBI working paper series no. 555 (Tokyo: Asian Development Bank Institute, Jan. 2015), <https://www.adb.org/sites/default/files/publication/179166/adbi-wp555.pdf>; Vivek Rao, *Developing the financial sector and expanding market instruments to support a post-2015 development agenda in Asia and the Pacific*, ADB Sustainable Development working paper series no. 36 (Manila: Asian Development Bank, March 2015), <https://www.adb.org/sites/default/files/publication/155081/sdwp-036.pdf>; Daniel F. Runde, Matthew P. Goodman, Conor M. Savoy and Amy J. Studdart, *The Asian Infrastructure Investment Bank*, CSIS Critical Questions (Washington DC: Center for Strategic and International Studies, 20 March 2015), <https://www.csis.org/analysis/asian-infrastructure-investment-bank>.

¹²³ Nicholas Bequelin, 'China's new development bank needs better human rights protections', *ChinaFile*, 15 Jan. 2016, <https://www.chinafile.com/reporting-opinion/viewpoint/chinas-new-development-bank-needs-better-human-rights-protections>; Rosenzweig, 'The AIIB and human rights'.

persisted regarding the bank's lack of consultation and transparency. Invitations to civil society to attend the 2016 annual meeting were restricted to a selected group of representatives who were offered little more than a couple of 90-minute seminars on a Sunday morning.¹²⁴ Similar criticisms have been levelled at other bureaucratized IFIs, including the World Bank¹²⁵ and the IMF.¹²⁶ While future AIIB meetings may provide space for improved engagement with civil society actors,¹²⁷ the AIIB will need to work hard to minimize criticism by adding to its communication channels—including during project assessment and implementation.

The AIIB is not alone in its need to balance the often conflicting demands of efficiency on the one hand, and consultation and transparency on the other. While improvements in public access have been slow, there are signs of institutional learning. Complaints about the rushed nature of the ESF consultation process, for example, appear to have had an impact. When the bank released its *Energy strategy issues note* in October 2016, it provided for two rounds of feedback—both before and after the issue of an energy strategy discussion draft in January 2017. There was a website announcement, including details of submission deadlines, and all comments on the issues note were released and published on the AIIB website—an improvement in transparency.¹²⁸ Whether or not this greater willingness to engage will actually have an influence on the content and implementation of AIIB policies and frameworks remains to be seen.

This article has argued that the AIIB cannot be seen simply as a tool for furthering China's geopolitical strategic interest. Rather, it should be seen as a forum within which China is 'crossing the river by feeling the stones' (*mo shi guo he*) in realizing sustainable development goals shared by all member nations. The AIIB provides an institutional space within which China can engage with regional neighbours in a recursive dialogue focused upon realizing shared sustainable development objectives. It also provides a mechanism for forging linkages between China's financial infrastructure and the wider global development finance scene; and in addition it constitutes a forum for engagement between member countries, with other IFIs and national financial institutions, and with civil society groups, both in policy development consultations and in the process of project development and implementation. The AIIB has the potential to become an important node within a network of overlapping relationships in twenty-first-century sustainable development finance. A recursive account of institution-building and norm-setting helps to illuminate both points of stability and incipient conflicts between the wide variety of actors that are emerging in the process of institutionalizing the AIIB.

Institutional recursivity views norm-making and rule implementation as an iterative and recursive process. International and national actors develop legal

¹²⁴ Rosenzweig, 'The AIIB and human rights'.

¹²⁵ Sarah L. Babb, *Behind the development banks: Washington politics, world poverty and the wealth of nations* (Chicago: University of Chicago Press, 2009).

¹²⁶ Paul Clements, 'Multilateral development banks and the International Monetary Fund', in John Linarelli, ed., *Research handbook on global justice and international economic law* (Cheltenham: Edward Elgar, 2013), pp. 121–45.

¹²⁷ Rosenzweig, 'The AIIB and human rights'.

¹²⁸ Andrew Green, 'Civil society sets advocacy targets for AIIB', *devex*, 17 March 2017, <https://www.devex.com/news/civil-society-sets-advocacy-targets-for-aiib-89819>.

norms that are then mutually refracted through exogenous processes such as economic incentives or persuasion through higher-level international institutions. These norms then undergo recursive cycles of change as they are interpreted and implemented.¹²⁹ In various ways, these cycles are driven by identifiable mechanisms, including (a) the indeterminacy of law (ambiguities in rules that can provide flexibility, while also creating sometimes expensive uncertainties) and (b) the contradictions and ideological/diagnostic struggles that occur between (and sometimes within) institutions. Recursivity theory provides a framework for understanding these mechanisms, and thereby points the way towards a full understanding of the emerging role and nature of the AIIB as a global actor in development finance.

¹²⁹ Roozbeh (Rudy) Baker, 'Legal recursivity and international law: rethinking the customary element', *Dartmouth Law Journal* 14: 1, 2016, pp. 21–2.