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Special Issue Article

Policy Norms, the Development Finance Regime Complex, and Holding the European Bank for Reconstruction and Development to Account

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Abstract

Created to facilitate the transition of economies of Central and Eastern Europe towards democracy and the free market, the European Bank for Reconstruction and Development (EBRD) is a regional institution in the development finance regime complex. This article examines how the EBRD's independent accountability mechanism (IAM) emerged and changed to demonstrate how policy norms filter through regime complexes. This is important because new ideas can change behavioural expectations and institutional practices across a complex. Tracing where the idea originated from and how it took hold is therefore central to understanding member state interests, the EBRD's response considering its organisational preferences, and how the policy norm solidified through inter-institutional learning. This deepens our understanding of the development finance regime complex in two ways: first, it, shows how ideas can filter through to seemingly independent institutions via member states, bureaucrats, and stakeholders. This supports the argument that the development finance regime complex is coherent with increasingly consistent rules and obligations. Second, it reminds us not to reify states; while they demanded institutional change nonstate actors influence what constitutes appropriate behaviour for development financiers.

Policy Implications

- Member states must ensure that development financiers mitigate the negative impacts of development on beneficiaries.
- Regional development finance institutions like the EBRD should be consistent with the World Bank and the International Monetary Fund in providing recourse for people affected by their activities.
- Reviews of the institutional design of oversight mechanisms like the Independent Accountability Mechanisms, can improve their consistency across development finance.
- It is essential that non-state actors be part of the review process of oversight mechanisms like the Independent Accountability Mechanisms.

The development finance regime complex is one of coherence (Held and Schmidke, 2019), competition (Rana and Pardo, 2018), and inefficient duplication (Kellerman, 2018). Central to the development finance regime complex is the World Bank and the International Monetary Fund (IMF), with an increasing number of development finance institutions operating at the regional and sub-regional levels (Kellerman, 2018). Little analysed is the European Bank for Reconstruction and Development (EBRD), which was created in 1991 to facilitate the transition of economies of Central and Eastern Europe (CEE) towards democracy and the free market (Weber, 1994). The multilateral development banks (MDBs) were modelled on the World Bank, but the EBRD has a distinct political and economic mandate, with a provision to lend 60 per cent of its loans to private sector operations. Nevertheless, it contributes to the coherence of the development finance regime complex through its fivefold mission: mobilising capital to promote private and entrepreneurial activities; fostering productive investment; providing technical project assistance; stimulating capital markets; and supporting viable projects (EBRD, 1990). While the EBRD has largely flown under the radar of scholarly attention, it is an institution worth investigating: it is a major contributor to fostering development in Central and Eastern Europe; it has expanded its geographical scope to include the Middle East and North Africa after the Arab Spring; its capital was boosted in 2009 in light of the Global Financial Crisis; and both China and India have joined as donors.

This article examines the emergence and restructuring of the EBRD's independent accountability mechanism (IAM), to document how a policy norm spreads and solidifies within the development finance regime complex. A regime complex is as 'an array of partially overlapping and non-hierarchical institutions governing a particular issue area' (Raustiala and Victor, 2004, p. 279). The literature on the development finance regime complex has focused how

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states facilitate regime shifting for their own interests (Held and Schmidke, 2019; Henning, 2019), with some arguing that ideas, networks, and endogenous feedback loops within the regime reinforce its coherence (Fioretos and Heldt, 2019). Supporting the latter argument, this article shows how states spread policy norms within the regime complex and work with nonstate actors to solidify it. This is important because new ideas can filter through regime complexes, changing behavioural expectations and institutional practices. I use a constructivist analysis to examine how an independent and relatively autonomous institution, the EBRD, took up ideas about the importance of being held accountable to those they affect. This goes beyond simple explanations of the EBRD reacting to member states' demands, which do not account for why donors demanded the policy norm's establishment, nor how the EBRD chose to implement and improve it. A policy norm is defined as 'shared expectations for all relevant actors within a community about what constitutes appropriate behaviour, which is encapsulated in (Fund or Bank) policy' (Park and Vetterlein, 2010, p. 3). Tracing where the idea originated from and how it took hold is therefore central to understanding member state interests, the Bank's response considering its organisational preferences, and how the policy norm solidified through inter-institutional learning. This deepens our understanding of the development finance regime complex in two ways: first, it shows how ideas can filter through seemingly independent institutions via member states, bureaucrats, and stakeholders. This supports arguments that the development finance regime complex is coherent with increasingly consistent rules and obligations. Second, although states demanded institutional change and institutions sought to circumscribe it, nonstate actors can influence what constitutes appropriate behaviour for development financiers. This qualitative research is based on 23 in-depth interviews with EBRD staff including former and current accountability officers, former executive directors, as well as former US officials and environmental activists between 2009 and 2017. This is backed by official EBRD publications and accountability mechanism annual and case reports.

The following section situates the EBRD within the development finance regime complex, and debates over the drivers of regime complexity and institutional effectiveness. I argue that more research is needed to show how regime complexes become coherent. A constructivist analysis can show how rules and obligations become more consistent by tracing how policy norms spread and solidify, changing behavioural expectations for the MDBs and their institutional practices. The second section examines how the EBRD's donors took up the policy norm not in reaction to EBRD activities, but from the interests of the United States that all the MDBs should have IAMs to provide recourse to people affected by the projects they finance. The US stance in the EBRD only makes sense if examined considering its engagement with stakeholders and other MDBs in the regime complex. The third section documents the EBRD's implementation of the policy norm, creating the IRM in 2003 to accord with its organisational preferences. It promoted a highly technical, compliance oriented, oversight mechanism under management control with minimal outlay, which made it difficult for project-affected people to access. The fourth section analyses how the policy norm solidified over time through inter-institutional learning where periodic reviews of the mechanism enabled nonstate 'Accountability Experts' and non-government organisations (NGOs) to apply normative pressure to make the IAM independent, solidifying the policy norm and creating consistent rules and obligations across the development finance regime complex.

Policy norms and the development finance regime complex

Global governance is crowded with institutions that increasingly overlap as they seek to provide the means for states to cooperate and regulate the international system. International regimes are complex 'because of the coexistence of rule density and regime complexes' (Alter and Raustiala, 2018, p. 333).[1] This has raised questions as to how institutions interact, whether this creates institutional competition, duplication, fragmentation, and ultimately, contributes to greater institutional effectiveness. Scholars argue that the proliferation of institutions is being driven in part by coalitions contesting multilateralism, or 'when states and/or nonstate actors either shift their focus from one existing institution to another or create an alternative multilateral institution to compete with existing ones' (Morse and Keohane, 2014, p. 387). Contested multilateralism is evidenced by regime shifting between institutions to better enable actors to achieve their interests, for example as states move between global and regional institutions in response financial crises (Henning, 2019). It may also be evident through competitive regime creation or establishing new institutions to challenge the status quo.

The rise of the Asian Infrastructure Investment Bank (AIIB) and other development finance institutions driven by rising powers have been viewed as competitive regime creation arguably because they were borne of discontent with Western dominated institutions (Wang, 2015), and challenged their dominance (Weaver, 2015). The new institutions create competition that could encourage forum shopping (Henning, 2019), and fragmentation through inconsistent rules and obligations (Cooper et al., 2008). Yet the governance of the AIIB and New Development Bank reveals complementarity with the World Bank and the IMF (Held and Schmidke, 2019), and their operations demonstrate that they are engaging in 'healthy' competition (Rana and Pardo, 2018). In other words, while there may be competitive regime creation occurring, with some degree of duplication, fears of fragmentation and ineffectiveness may be overstated.[2]

In this article I investigate how the EBRD came to adopt rules and obligations consistent with other MDBs (Park, 2017), as a means of demonstrating how coherence is produced within the development finance regime. This

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supports institutionalist research that points to the role of ideas, networks, learning and endogenous feedback loops that occur within the development finance regime complex (Fioretos and Heldt, 2019). It also supports the importance of state action driving institutional inter-play (Henning, 2019), while recognising that both state and nonstate actors create behavioural expectations and institutional practices. I explicitly document this in relation to the EBRD's adoption and strengthening of its IAM. By tracing how ideas are taken up by the EBRD and turned into policy, a constructivist analysis documents how ideas change behavioural expectations as to what constitutes appropriate behaviour for the bank (management and staff), and change institutional practices in the form of new units, new job positions, and new reporting activities. This is important for three reasons: first, it demonstrates how states can drive the creation of policy norms and solidify it with bureaucrats and stakeholders. This upholds research on the role of nonstate actors shaping institutions (Johnson, 2014). Second, policy norms change over time (Park and Vetterlein, 2010). I therefore investigate how the EBRD created and improved its IAM to become more consistent with rules and obligations across the regime complex to independently hold the MDBs to account. Finally, the focus on the accountability policy norm reveals how human rights (in this case, the right of recourse for people adversely affected by an MDB-financed project) can be made socially appropriate for the MDBs, while the latter continue to resist engagement with both the human rights regime (Clapham, 2006) and environmental regimes (Park, 2020). The next section details the EBRD's similar operations and governance structures to the other MDBs, before tracing how the accountability policy norm spread and solidified.

The EBRD and the development finance regime complex

The regional development banks, like the EBRD, are functionally similar and were designated to provide additional financing within their regions beyond the World Bank and the IMF (Park and Strand, 2016). From its inception the EBRD was given both a political and economic mandate to spread liberal democracy and capitalism across Europe (EBRD, 1990; Weber, 1994). However, once operational the Bank conformed to the apolitical norms of the more established MDBs with its lending operations focused on meeting technical economic and financial criteria (Stein, 1996). Like the other MDBs, the EBRD primarily dispenses loans, equity investments, and guarantees to the private sector, as well as to municipalities and publicly owned entities. Its neoliberal economic prescriptions work with the advice promoted by the World Bank and the IMF but specifically tailored to CEE (Shields, 2016). It uses its ordinary capital resources drawn from the Bank's capital for its operations, as well as facilitating regional and thematic multi-donor trust funds. The Bank has grown over time: from its initial investment of nearly 500 million European Currency Unit (ECU) for 16 projects in 1991 to invest its largest amount ever in 2017: 9.7 billion euro for 412 projects (EBRD, 1992: 10, 2018, 4).[3] This compares with the AIIB, who committed US$1.9 billion United States dollars (USD) for just 15 new projects in 2017 (AIIB, 2018a; see Table 1). In terms of its operations, the EBRD is much smaller than the largest MDBs, the European Investment Bank (the European Union's investment bank) and the World Bank (see Tables 1 and 2; see Baroncelli, this issue).

Of the EBRD's 2017 investments 71 per cent went to the private sector (EBRD, 2018a). One third of these were in the finance sector, followed by infrastructure, diversified corporate sectors, and energy (EBRD, 2018b). Currently it operates within 39 states and territories.

In terms of governance, the EBRD is located in London with over 2,000 multinational staff comprised of investment bankers. It is a regionally focused organisation with 67 member states and two institutions as members, the European Union and the EIB. The EBRD's regional focus has not impeded a strong representation of non-regional members, foremost the US but also Japan. China joined in 2016 and India in 2018 as donors. Membership is determined by the amount invested, a governance model that emulates the World Bank's 'one dollar, one vote' system. To become a member, states provide 'paid-in' capital and 'callable' subscriptions with the latter held in reserve to cover lending risks (Mistry, 1995). The MDBs raise additional capital via loan repayments, interest, and international capital markets.

The EBRD's governance system means there is an unequal distribution of shares in the Bank, with shares translating into voting power. The US is the largest shareholder (10.1 per cent), which is marginally larger than the equal second shares held by France, Germany, Italy, Japan, and the United Kingdom (8.6 per cent each). The Group of Seven (G7) have the largest shares, thus controlling the direction of the Bank (see Table 3). This has remained stable since the EBRD's inception, with recipient shareholders holding much smaller

Table 1. Comparing MDB loan commitments, 2017

FY 2017 Commitments (US$m)	
World Bank Group*	61,783
African Development Bank Group	8,824
Asian Development Bank**	28,899
Inter-American Development Bank Group***	13,869
EBRD	11,625
AIIB****	1,947,528
European Investment Bank	100,684

Notes:: All figures are taken from the MDB annual reports and have been converted into United States dollars.
*Includes IBRD, IDA, IFC, Recipient-Executed Trust Fund (RETF) commitments, and MIGA gross issuance.
**Total commitments, including technical assistance, cofinancing and trust funds.
***Loans and guarantees (including 'other funds'), grant financings and the Multilateral Investment Fund.
****Figure may include 2016 commitments. All data taken from the annual and financial reports of the Banks.

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Table 2. Comparing MDB project numbers, 2017

FY 2017 Projects (no.)	
World Bank Group	383
African Development Bank Group	249
Asian Development Bank Group	140
Inter-American Development Bank Group	157
EBRD	412
AIIB	15
European Investment Bank*	901*

Note:: *Includes all projects supported by the Bank.

shares overall. There have been only two injections of capital into the Bank since it emerged; these have not altered the percentage of shares held by the major donors. Capital injections are periodic increases in the amount of paid-in capital of the Bank undertaken via a general capital increase (GCI) to increase the capital to loan ratio. The first was in 1997 when the Bank had reached its lending capacity (Linarelli, 1995), and the second in 2009 after the Global Financial Crisis.

The EBRD is unique compared with other regionally oriented MDBs because the largest shareholder, the US, is not of the region. Western European states wanted strong US involvement in the Bank and were willing to accept its focus on lending for private entrepreneurial initiatives to get it (Menkveld, 1991). Although the US has the largest share, its voting power is below that required to give it a veto over decisions requiring a special majority, which it has in the World Bank, and China has in the AIIB. Decisions requiring a special majority include admitting members, changing the Bank's governance structure, altering Bank subscriptions, or ceasing Bank operations (Shihata, 1991). The US therefore must negotiate with other donors to advance its ideas. While the US cannot veto policies or projects presented by EBRD management to the board of directors for approval, the US can work with another large voting state to institute a 'blocking majority' in relation to special majority voting decisions (Bronstone, 1999).

All member states appoint a Governor of the Bank; usually the state's Finance Minister or Treasurer. The Governors meet annually to determine the overall policy direction of the Bank including membership, the capital stock of the Bank, and appointing the president. Member states then delegate responsibility to a 23-member board of directors, who approve Bank programs and projects year-round. The EU and EIB have their own director, as does Japan, France, Germany, Italy, the UK, and the US. The remaining member states share a director in mixed constituencies. The regional composition of the board of directors is designed to ensure representation from Western European states, CEE states, and non-European states. Weighted voting is used within the mixed constituencies to determine the director of that constituency, who casts the vote on the board. This allows 'dictators' to guarantee their election within the constituency (Strand, 2003: 119). The board of directors vote on the Bank's daily operations, which are devised by Bank staff and are presented to the board by management, led by the president. This level of autonomy is common for MDBs *vis-à-vis* their member states. The differences between the MDBs are minor, as is how they adopted Independent Accountability Mechanisms. The differences do, however, inform how institutions respond to member states demands, detailed next.

How the policy norm spread to the EBRD

Efforts to hold the EBRD to account for the negative impact of its lending on the environment and people in project areas were implemented much later than the other MDBs (Park, 2017). This is despite its Articles of Agreement, which mandates the EBRD to promote 'environmentally sound and sustainable development' (EBRD, 1990, Article 2.1, vii). This inclusion stemmed from the World Bank's history of funding development projects that contributed to environmental and social harm (Wade, 1997); and in anticipation of the United Nations Conference on Sustainable Development in 1992. During the 1990s international financial institutions were increasingly being accused of not being transparent, of being unaccountable, illegitimate, and having a democratic deficit (Woods, 2001). This increased expectations for institutions to open up to stakeholders (Tallberg et al., 2013). From 1993, the United States in concert with NGOs pressured the MDBs to create Independent Accountability Mechanisms with dual aims: to hold the MDBs to account for meeting their environmental and social policies, and to provide recourse for people directly adversely and materially affected by MDB-financed projects (Park, 2017). As a result, most of the IAMs have 'problem-solving functions' to discuss with communities how to resolve problems, and 'compliance investigations' to determine whether Bank policy failures led to harm. The EBRD's belated response to such demands, and its subsequent improvements are investigated here.

There is no evidence that the EBRD created its IRM in 2003 from a desire to provide protection for people from the projects it finances, or that it pre-empted demand from states or civil society to do so. While NGOs like CEE Bankwatch had long argued that the Bank should have an IAM (CEE Bankwatch, 2001; Wold and Zaelke 1992) they were not the primary driver (Interview with EBRD staff, 18 May 2009; Interview with former US Treasury staff 4 November 2013). Pressure came from member states, and the US was its primary advocate. The US had made the need for the MDBs to have IAMs a concerted policy aim from the mid-1990s (Interview with former US Treasury staff 4 November 2013). Yet EBRD member states did not ask for it until 2001. We cannot explain the US and member state demand for EBRD accountability in 2001 without reference to the development finance regime complex. Indeed, US demands stemmed not from an EBRD actions per se, but from US demands that *all* MDBs have IAMs for sovereign, and then non-sovereign lending (recall that the EBRD lends over 60 per cent of its loans to the private sector). The broadening

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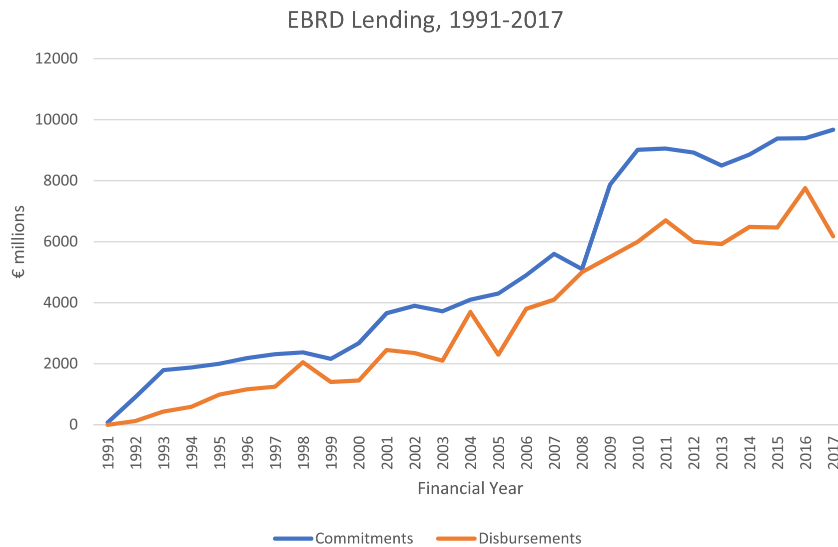
Figure 1. EBRD Lending 1991–2017. Data collected from the EBRD annual reports. Figures are in millions of Euros.



of the policy norm to include non-sovereign lending led member states to ask the EBRD to create an IAM much later than for the other MDBs (Park, 2017).

The US took up NGO concerns about the negative impacts of World Bank-financed projects to demand the establishment of its Inspection Panel in 1993. Threatened by a US cut to its International Development Association replenishments, the World Bank caved to its demand (Wade, 1997). The US then used financial incentives for general capital increases to push the policy norm through the Inter-American Development Bank in 1994 and the Asian Development Bank in 1995. Unlike these MDBs, the US did not use financial incentives such as a general capital increase for the EBRD in 1997, because at this stage, it believed that non-sovereign lending was different.

Reasons posited were that private sector projects operate on shorter time horizons, are subject to commercial confidentiality and the sanctity of contracts, as well as host country laws covering the operations of the company and the project being financed. Additional concerns included ensuring certainty of access to MDB financing for companies, while recognising that private sector clients have multiple co-financiers, which complicate holding a lender to the private sector to account. Moreover, the EBRD was recognised to have limited influence because it invests less than 35 per cent in companies undertaking development projects. This widespread view of non-sovereign lending determined that the World Bank's IAM (the Inspection Panel) should not cover the rest of the World Bank Group, comprised of the International Finance Corporation and the Multilateral Investment Guarantee Agency, and informed the Asian Development Bank's decision to exclude non-sovereign loans in its inspection function in 1995. The EBRD did not see that a mechanism to investigate its own behaviour was therefore necessary.

The US began to argue that IAMs should cover non-sovereign lending after demanding the World Bank Group establish one in 1999. This stemmed from a large-scale environmental campaign against an International Finance Corporation (IFC) project (Park, 2017). According to one Bank staff member, the 'IFC and the EBRD held out the longest . . . once the IFC had done it the writing was on the wall' (Interview with EBRD staff member, 9 June 2009). The idea that all the MDBs should have IAMs gained traction among donors that dominate the EBRD's board (Interview with former US Treasury staff 4 November 2013; Interview with EBRD staff 14 October 2013). In 2000, the G7 Finance Ministers Report stated that 'Independent inspection panels should be in place in an appropriate manner in all institutions' (G7, 2000). In June 2000, the Parliamentary Assembly of the Council of Europe 'passed a resolution that encourages the EBRD to "consider the establishment of a body to hear appeals and grievances from the public"' (Hlobil, 2002, 20). The G7 reiterated their call in 2001 for the MDBs to 'strengthen or establish inspection mechanisms' (G7, 2001).

The EBRD's Governors asked management to develop proposals for creating an accountability mechanism 'along the lines of the World Bank Panel' in 2001.[4] The US strongly advocated for such a mechanism while the European directors were concerned about the cost. In the end they agreed to establish a mechanism 'without throwing money at it' (Interview with EBRD staff, 9 June 2009).[5] The board of directors then held a closed executive session to agree on establishing a mechanism in May 2002. The Europeans were concerned with how it would affect the Bank's commercial confidentiality while the US and Canada were more open (Interview with EBRD staff, 9 June 2009). The Bank's Office of the General Council then prepared a background paper on the structure of the IAM for public consultation. The IRM was approved in 2003.

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Table 3. G7 Member states shares and voting power in the EBRD, 2017

Member States	Shares	Voting Power	Voting Power as a Percentage
US	300,148	300,148	10.1
Japan	255,651	255,651	8.6
Germany	255,651	255,651	8.6
France	255,651	255,651	8.6
UK	255,651	255,651	8.6
Italy	255,651	255,651	8.6
Canada	102,049	102,049	3.43
G7 total	1,680,452	1,680,452	56.5
Bank total	2,972,307	2,972,307	100

How the EBRD implemented the policy norm

As the previous section showed, the creation of the Bank's IAM was influenced by emergence of the policy norm within the broader development finance regime complex. Once member states agreed to establish an IAM for the EBRD, however, the Bank as a relatively autonomous institution then had to work out how to implement it. Like the other MDBs, the EBRD crafted an IAM it could control, while its emphasis on efficiency over effectiveness makes sense within the Bank's austerity culture. This section shows how institutional rules and obligations are created, before detailing in the next section how the EBRD's IAM was made more consistent with the other MDBs in the regime complex through inter-institutional learning.

The Bank's Office of the General Council designed the IRM with input from operations staff (Interview with EBRD staff 14 October 2013). The EBRD sought to maintain control over its IAM by locating within management rather than being independent of the president. This led the US, its primary advocate, to *abstain from voting on establishing the independent recourse mechanism*. The US stated that 'while pleased with the upcoming establishment of the IRM, Treasury believes that its independence and scope should be enhanced. At US insistence, there will be a review after two years of operation of the entire mechanism'. This would allow the US to 'push for more progressive positions on these policies when they are reviewed' because the IRM was not separate from Bank management in investigating harm caused by the Bank (United States Congress 2004, pp. 220–221).

The Bank's president therefore had the power to determine whether to accept or reject the independent recourse mechanism's recommendation to accept a grievance claim for investigation. This gave the president substantial power over a mechanism investigating the Bank's own activities. This enabled the EBRD to maintain its autonomy despite member state's oversight demands. Moreover, if the president allowed an investigation then the board of directors could then accept or reject the IRM expert's findings. This had been a highly divisive feature of both the World Bank and the Asian Development Bank's IAMs, which led to their board's accepting investigation recommendations on a 'no objection' basis (Park, 2017).

The second factor underpinning the structure of the IRM was concerns over efficiency. Costs were central to the design debate as reflected in member state concerns and management's desire to limit outlays on oversight. The EBRD looked to other MDBs for design inspiration, particularly the International Finance Corporation and the Asian Development Bank as the institutions closest to their structure and mandate (Park, 2017). The IFC's mechanism was considered too expensive; it cost the same as the EBRD's entire environmental and social unit. Having a large Roster of Experts like the Asian Development Bank to investigate claims on a needs basis was also considered too immoderate. Instead the Bank chose to locate the IRM within a newly established Office of the Chief Compliance Officer. Comprised of a single person, the office was charged with 'ensuring the Bank's highest standard of integrity' covering Bank codes of conduct, including investigating allegations of fraud, corruption, and misconduct (EBRD, 2014).

The Chief Compliance Officer would receive claims for the IRM that would then be assessed by a panel of three independent experts drawn from a small roster. The Chief Compliance Officer reports to the Bank president. Some argued that this ensured the independent recourse mechanism's budget and so that it could 'be part of the institutional process' (Interview with EBRD staff member, 18 May 2009). For others, this meant that the IRM was not independent at all while the smaller Roster of Experts replicated structures that had proved problematic for other MDBs (Filho and Rios, 2007). According to one insider, the Office of the Chief Compliance Officer as mere 'window dressing' (Interview with EBRD staff, 14 October 2013). Activists argued that the EBRD designed its mechanism not to work, merely setting it up to meet the requirement to have one (Interview with accountability activist, 15 May 2009).

The IRM was designed 'to provide a venue for an independent review of complaints or grievances from groups who are, or are likely to be, directly and adversely affected by a Bank-financed project'. The initial idea for the IRM was to focus on problem-solving with communities affected by EBRD-financed projects. This followed the World Bank Group's mechanism established in 1999, which was in the process of being emulated by the Asian Development Bank's revised IAM in 2003. However, the EBRD shifted to emphasise compliance with Bank policies rather over mediating with project-affected communities. EBRD President Lemierre argued that:

> other IFIs have established permanent offices and/or panels to carry out the compliance review function and/or the problem-solving function. Such independence may however be ensured through other means of a *less bureaucratic and costly nature*, more suited to the institutions specific mandate, organisation and resources.[6]

NGOs argued that 'the weaknesses in the proposed IRM undermine the independence, credibility and effectiveness of the IRM for the affected people it is meant to serve'.[7]

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Moreover it was pointed out that the roster of experts had not proven to work in other cases and that adding accountability 'to a staff member, with multiple other duties' does a 'disservice . . . to both the claimants and to the Bank'.[8]

Structure of the IRM

The Bank designed a highly technical mechanism that was difficult for project-affected people to access. Project-affected people could instigate either a 'problem-solving' process or a 'compliance investigation', or both processes simultaneously. The IRM procedures detailed that submissions must be written, outline the project, and any affected harm, and whether attempts had been made to convey the concern to the Bank, and if there is an authorised representative to act on their behalf (EBRD, 2004). A claim is registered if it fits within the purview of the independent recourse mechanism: that it relates to a project being financed by the EBRD, triggers the Bank's environmental and social policies, and excludes claims related to fraud, corruption and mis-procurement, that seem frivolous, or seek competitive advantage. The policy made it clear that the IRM could not be used to advance the Bank's democratic mandate at the project level by invoking the Articles of Agreement to foster multi-party democracy (EBRD, 1990).

As with the IAMs of the other MDBs, a claim to the IRM would not stop a project from continuing, although an accountability officer could recommend the halting of disbursements if 'serious irreparable harm shall be caused'. This has never occurred. Indeed, the policy was explicit that its activities would be done 'as expeditiously as possible and to minimize any disruption that they may cause to the daily operations of the Bank, project sponsors and Bank clients' (EBRD, 2004). Once registered, the IRM evaluates whether the complaint is eligible for problem-solving or compliance review through an initial eligibility assessment report. The Chief Compliance Officer hires eligibility assessment experts to evaluate the claim. The president is charged with responding to the eligibility assessment report recommendation if the project has not yet been approved by the board for financing, or for projects under ten million Euros. The president therefore had the power to block an investigation of his own staff. If the project had been approved by the board, then the president must pass the recommendation for a compliance review to them for approval. The board *may choose to send the recommendation back to the assessors for revision*. This gave the board the power to delimit the nature of the compliance review or to accept or reject the independent recourse mechanism's recommendation for investigation. The Chief Compliance Officer may also recommend a problem-solving initiative to the president if it would benefit affected communities and had a likelihood of success. The lack of independence from bank management and the board undermined its legitimacy for holding the Bank to account.

However, if a compliance review is approved by the president or board it is undertaken by a Compliance Review Expert. Upon completion, the findings and recommendations are submitted to either the president or the board. The compliance review report may identify remedial actions to be undertaken by the EBRD to bring the project into compliance. The IRM was given substantial power to indicate recommendations to Bank management including 'any remedial changes to systems or procedures within the EBRD to avoid a recurrence of such or similar violations' as well as at the project level. The Chief Compliance Officer also had the power to monitor Bank management's implementation of its recommendations and report on it at least annually (EBRD, 2004). Therefore, once an investigation had been approved and the recommendations accepted, the IRM had robust powers to hold the Bank to account.

Effectiveness of the independent recourse mechanism

The IRM began functioning in July 2004. Its first annual report was delayed due to the mechanism's 'relative inactivity', which some argue was evidence that it 'made an effort not to be known' (Interview with accountability officer, 4 October 2013). By that stage, the IRM had received seven complaints but only two met the eligibility criteria for being evaluated (EBRD, 2004–2005). NGOs argued that the IRM was 'effective in preventing requests to look into the compliance of certain projects with EBRD's policies' because of its 'excessively legalistic language' (CEE Bankwatch Network, 2007). In 2006, the Chief Compliance Officer reported that she was having difficulties in applying some of its rules of procedures but that a review of the IRM policy was 'precipitous' due to its relative operating inexperience. The IRM's first claim did not go through the full process because the project (request 2005/01) had not been approved by the board. The EBRD later chose not to finance the project for environmental reasons; it is unclear if the claim influenced this decision (EBRD, 2006).

Between 2004 and 2009 the IRM would register five out of 13 claims as bona fide to assess their eligibility for a compliance review or problem-solving. Of the five cases that were accepted, three went to the problem-solving function, two of which were halted by the project sponsor (requests 2005/02 and 2006/01).[9] This is because there is no onus on companies to engage in problem-solving. The only claim to go through problem-solving related to the Baku-Tbilisi-Ceyhan (BTC) pipeline in the Atskuri village in Georgia (request 2007/02). The board accepted the Chief Compliance Officer's recommendation for problem-solving. The initiative was considered successful with most complainants' concerns being addressed regarding compensation for housing affected by the pipeline (EBRD, 2008). Thus, problem-solving depends on the company being willing to engage with the process.

Only one claim went through a compliance review: The Albanian Vlore Thermal Power Generation Project claim (request 2007/01). The compliance review found that the Bank did not meet the public consultation and information disclosure requirements of the environmental and social policy but that this was a 'minor technical violation' not requiring changes. Instead changes to the EBRD's procedures could

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feed into the Bank's new policy review, which the Bank approved in May 2008. While the board and president approved all the IRM's recommendations, there was little in the way of protracted problem-solving or compliance reviews being undertaken. This led CEE Bankwatch (2007) to state that the 'IRM does not pass judgement on ineffective EBRD policies and strategies, it does not encourage active engagement with all parts of civil society . . . and it does not have power over the actions of the EBRD's clients'. As discussed next, inter-institutional learning through reviews of the IAM would lead to improvements in its independence, while contributing to greater consistency of IAM rules and MDB obligations across the regime complex.

Solidifying the policy norm through inter-institutional learning

The US demanded periodic reviews of the IRM soon after it was established. In 2007 it was agreed to review the 'limited scope for problem-solving initiatives' (EBRD, 2007, p. 6). By then, the IRM recognised that its 'Rules of Procedures are considered by many to be less than "user friendly" and not well known (either internally or externally to the Bank)' and that its process was overly technical and cumbersome (Interview with EBRD staff 27 September 2013; EBRD, 2008). Accountability experts were deployed to address the flaws. External advisors such as Edith Brown Weiss (former World Bank Inspection Panel Chair) and Natalie Bridgeman of the NGO Accountability Counsel, were hired to benchmark the IRM to other IAMs, conduct internal surveys, and provide a revised draft policy. An internal working group was set up to recommend changes involving the Office of the Chief Compliance Officer, the Office of the General Counsel, and the Environment and Social Department. A revised draft of the IRM's Rules of Procedure was opened for public comment between December 2008 and February 2009. They accepted comments from accountability experts from the other IAMs. The Bank responded to stakeholder submissions and included their recommendations for greater independence from management (EBRD, 2003). Most of the changes were pushed through because they had the backing of the US director (Interview with accountability expert 18 May 2009).

During the review it became clear that there was no possibility that the IAM would be moved out of the Office of the Chief Compliance Office, despite stakeholders questioning its independence (Interview with accountability expert 18 May 2009). This was seen as problematic because it could not ensure confidentiality when requested by complainants, withstand pressure from management, or ensure the integrity and functioning of the unit separate from budgetary pressure.[10] Despite this, the newly renamed project complaint mechanism (PCM) was given more independent decision-making from the Bank management and the board. Revisions included: changing its name to make it clear what the unit was for; establishing a specific officer to administer the mechanism; to streamline the process for eligibility; drop the need for president/board approval to allow a compliance review; to give management a formal right of reply to a complaint; to allow NGOs to submit claims; to provide clear language and timeframes for the mechanism's operations; and to appoint at least three experts to serve on the roster.

On 6 May 2009, the board voted to replace the IRM with the PCM. A newly created PCM officer was placed in charge. The new mechanism could determine whether a claim is eligible independent of the president or the board. This independence made it consistent with the other IAMs at the time, bar the Inter-American Development Bank which was under review (Park, 2017). Once the investigation has concluded the PCM submits its report to Bank management and the president or board as appropriate. If found non-compliant, management must respond with a management action plan. Both management and claimants can respond to the compliance review report. The PCM then revises the recommendations (but not the findings) for submission to the Bank's president or board 'for acceptance' (EBRD, 2009: 13). The mechanism retained its power to monitor any remedial actions where the Bank has been found non-compliant.

The mechanism is notably free from the president's or boards' interference, allowing it to inform them of their deliberations rather than seeking approval. In short, the board 'can't kill it' (Interview with EBRD staff, 5 November 2012). While the board is generally supportive of the IAM, they do not want projects stopped or to be held 'hostage' for financing operations (Interview with EBRD staff 14 October 2013). The first PCM officer Anoush Begoyan was 'fierce' in protecting the office from management involvement (Interview with accountability officer, 4 October 2013). There has been no problem with the EBRD president signing off on problem-solving initiatives. Arguably it is not within the president's interest to oppose improving dialogue between affected people and project sponsors regarding projects the EBRD is financing. The PCM stated that there is a good relationship between the panel, management and the environment and social department allowing for 'frank discussions' even when the mechanism is leaning towards a finding of non-compliance (Interview with two EBRD staff, 27 September 2013).

The complaint process also became more accessible in terms of streamlining the number of criteria to be included in a claim, although it retained its 'legalese' (Interview with accountability expert, 27 February 2009). The US director, the external consultants conducting the review, and IRM experts pushed for the right of individuals and NGOs to make claims, not just two or more people directly affected in the project-affected area, which the EBRD accepted (Interview with accountability officer, 27 September 2013; Interview with accountability expert 18 May 2009). This substantially increased the number of claims being accepted by the PCM for investigation (38 claims being registered between 2010 and 2019). Another major improvement for claimants was to allow them to choose whether they wanted problem-solving or a compliance review, which accountability experts had advocated and contributed to greater rule consistency across the IAMs (Park, 2020).

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Effectiveness of the project complaint mechanism

The PCM was a definite improvement over the IRM (Interview with EBRD staff, 14 October 2013), with the number of claims being submitted showing that it 'has gained the trust of project-affected communities and civil society groups and is viewed as a credible recourse mechanism' (EBRD, 2011, p. 2). Overall, however, the mechanism still has a high rate of rejecting claims submitted by project-affected people, accepting only 21 per cent as bona fide (Park, 2019). Between 2009 and 2018, 12 claims were accepted as viable for problem-solving under the PCM: three were rejected because the company withdrew their request for Bank funding, two ended with the withdrawal of the claimants from the process, and three ending with an exhaustion of recourse, with another in progress as of the time of writing. Despite operating for over ten years, there was only one example of the PCM successfully resolving complainants' concerns. This points to the limited conditions under which problem-solving can succeed. In terms of compliance investigations, the PCM has been a much stronger tool for holding the Bank to account. The mechanism investigated 71 per cent of claims submitted (Park, 2019). Staff and experts state that companies 'improve their behaviour' when the Project Complaint Mechanism is around (Interview with two EBRD staff, 27 September 2013). The PCM has become more confident in identifying findings of non-compliance over time, and it has the provided recommendations to the Bank to become policy compliant and monitored their implementation.

2013 was a turning point for the PCM when it detailed three findings of EBRD policy non-compliance which the board and Bank management had to accept. All three were hydro power projects non-compliant with the Bank's biodiversity and sustainable natural resource management policy (requests 2011/05, 2011/06, 2012/01). After three findings of non-compliance in a row the Bank was 'reeling' with the general council advising the board and backing up staff (Interview with accountability officer, 4 October 2013). These cases show that the PCM is capable of documenting where the Bank has failed and monitor its remedial action. Monitoring may take place biannually or until the PCM officer determines that it is no longer needed. These robust provisions provided the PCM with the ability to better enact accountability. The mechanism demonstrates that it has the independence to determine if the EBRD is in breach of its policies, to provide recommendations, and undertake monitoring to ensure Bank compliance. This is a testament to the board's willingness to accept the independent findings of the PCM experts.

In keeping with its original emphasis, there is a strong trend towards compliance investigations under the PCM with 28 claims registered between 2009 and 2019. Overall, nine were found policy compliant and not leading to harm (with another investigation underway). Of the remaining 18 cases, 13 would find evidence on non-compliance with the Bank's environmental and social policy, five with the Bank's involuntary resettlement and information disclosure policies, three breaching natural habitats policy, two in relation to labour standards, and another two breaching the Bank's resource efficiency and pollution prevention policy. Of the 13 found non-compliant, only one would be considered to have been adequately addressed by management. The rest would be monitored by the accountability mechanism to bring the projects into compliance, most requiring multiple monitoring reports (Park, 2019).

There is now greater awareness of the IAM by operations staff at headquarters, but claims make staff 'nervous' and they do not know how to proceed (Interviews with EBRD staff, 5 November 2012). Staff know about the PCM especially those who 'have been complained about' such as the extractives and energy sectors. Unlike in the early days of the IRM, bankers now 'accept it but [they] don't necessarily like it'. By including staff input into the 2013 review of the PCM they are able to engage with the process without being able to scuttle it (Interview with EBRD staff, 14 October 2013). The shareholder mandated 2013 review led by accountability expert Richard Bissell (former World Bank Inspection Panel Chair and African Development Bank accountability expert) resulted in minor technical changes to its rules of procedure. The mechanism's most recent review beginning in 2018 lead to the reformulation of the mechanism again. Coming into effect in 2020 is the independent project accountability mechanism (IPAM). The new mechanism achieves what accountability experts from the other IAMs have been advocating: it is no longer within the Office of the Chief Compliance Office, and completely separate from EBRD management. It will have its own management and will report directly to the board. Ongoing periodic reviews by accountability experts of the Bank's mechanism have enabled stakeholders to promote inter-institutional learning among the IAMs, which have enabled the EBRD's mechanisms to become more independent and robust.

Conclusions

This article analysed the little examined EBRD. It examined the emergence and restructuring of the EBRD's IAM, to document how a policy norm spreads and solidifies within the development finance regime complex. This constructivist account documented how the relatively independent EBRD was forced to take up the idea that they should be held accountable to those they affect. This goes beyond simple explanations of the EBRD reacting to member states demands, which do not account for why donors demanded the policy norm's establishment, nor how the EBRD chose to implement and improve it. The article shows the power of states to demand institutional change and for independent institutions to resist, while supporting research that ideas, networks, and endogenous feedback loops reinforce coherence within the complex (Fioretos and Heldt, 2019). In this case, states spread policy norms within the regime complex and work with nonstate actors to solidify it. New ideas therefore filter through regime complexes, changing behavioural expectations for MDBs and institutional practices like

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holding the Banks to account through IAMs. It showed how ideas can filter through to seemingly independent institutions via member states, bureaucrats, and stakeholders. This reinforces the arguments that the development finance regime complex is coherent with increasingly consistent rules and obligations for the MDBs having independent IAMs. Further research is needed to analyse how accountability policy norms in the development finance regime complex intersect with elemental human rights and environmental regimes.

Notes

1. This highlights increasing regime complexity and the proliferation of regime complexes.
2. Indeed, the AIIB has an IAM not dissimilar to the EBRDs (AIIB 2018b). This reinforces the argument that there is coherence within the development finance regime complex and that the policy norm has been taken as given by even to non-US dominated institutions.
3. The ECU was comprised of a mixed basket of currencies of members of the European Community prior to the introduction of the euro in 1999.
4. Friends of the Earth copy of the Asian Development Bank's Inspection Function proposal dated 18 January 1995. On file with author.
5. Concerns over costs are baked into the institution beginning with the furore over excessive spending when the EBRD was built (*The Economist*, 1993; Interview with accountability expert 11 October 2013).
6. EBRD, President's Recommendation to the EBRD board of executive directors, 29 April 2003, EBRD, London, pp. 3-4; emphasis added. On file with author.
7. BIC, CIEL and CEE Bankwatch Network, 'Joint Comments on the EBRD's Proposed Independent Recourse Mechanism,' dated 29 January 2003. On file with author.
8. Letter from Richard Bissell and Jim McNeill, former Chairs of the World Bank Inspection Panel to EBRD President Jean Lemierre dated 15 January 2003. On file with author.
9. The EBRD has an online publicly available case registry of requests submitted to the IRM, see: https://www.ebrd.com/work-with-us/project-finance/project-complaint-mechanism.html
10. Comments by Eduardo G. Abbott on the EBRD's Project Complaint Mechanism Draft Rules of Procedure, 12 February 2009. Accessed: 28 May 2009. Cited: http://www.ebrd.com/pages/project/irm.shtml. Eduardo Abbott was the first secretary of the World Bank Inspection Panel.

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