

# Under the vision of global governance - Public participation in international financial legislation and China's choice

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**Abstract:** as global governance grows in depth, International Finance and Labor, Environment, Health, issues such as education show tighter contact. This means that the public should participate in international financial legislation with traditional governing bodies. However, practice public participation the path does not meet public interest claims and basic rights maintenance. So, must conform to the development trend of global financial governance potential. All-round, provide institutional guarantees for public participation in legislation from multiple angles: achieving stability in public participation legislation; ensure public participation in the order of legislation; The possibility of increasing public accountability. China should draw on the experience of developed countries, on one hand foster high quality public groups, improve their international influence, on the other hand lower NGO and other public groups access door threshold, building a complete access management, thereby enhancing the discourse power of international financial legislation.

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## 1. problem raised

Global governance theory originated from century European of the era, with the depth of globalization and the frequency of global problems appear, more and more countries are beginning to pay attention to this theory. In particular 2008 year after financial crisis, the global governance concept gets the country unprecedented attention by the international community. Global governance theory, previous hierarchical governance patterns have been difficult to deal with in international affairs show changes, the challenges facing international law not only transcend the traditional international law of domestic law, also no longer emphasize public-private legal department gate differences. State actors must take the past along the part of the power spread to non-State actors such as civil society, let

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They play a role in the international legislation process. and, finance, International legislation on environment and security has been deeply infiltrated through to ordinary people's daily life, after space expansion and time lapse. The functional role of the law expands gradually. wcausethis, to deal with such a complex problem, The public needs to be deeply involved in the at all levels of the international community.

The World Bank considers Public refers to participating in public life, expresses the interests and values of itself or others, and with the path, culture, Science, the various non-governmental and non-profit groups based on considerations of religion or charity. also not only means Non-governmental organization, also includes unions, religious institutions, Research Center, Media and Professional association, simply to be private to for people or civil organizations. one straight since, International financial institutions (International Financial Institutions, IFI) ① to note The focus is on sovereign states and regulators, Less public attention. but, due to historically international financial institutions in people rights, Social and environmental aspects cause some degree of negative impact, International pressure makes it more and more concerned about the private right to know, issues of participation and relief. [3] (tm<sup>2-215</sup>) at the same time, public expectation of safeguarding their own interests at the global level, to participate in the international finance stand The Extent and scope of the method raises a higher requirement for. w (四) Practice, International financial institutions are working to provide a theory of public participation in legislation Guidance and technical and financial support. has data indicating, in the past 20 year, Public Participation in international financial legislation more consciously than heavy steady rise. however, giving public access to more participation is not an easy task. International financial institutions require on the premise that financial markets are stable and orderly, Implement the country, organization's harmonious coexistence with the public, Balance the interests of all parties.

typically, participates in has human rights properties, The also embodies the characteristics of democracy. from the domestic level, "Public Participation" is the people Constitutional guarantee of the main country; on the international level, It originated from human rights legal documents and international organizations related to sustainable development. [5] (四) now, Public Participation in legislation has been seen as a fundamental requirement for global governance, and develop into important principles of international law. [5] four 1 2 > Practice Medium, The positive role of the public in the international financial legal order is obvious. but, International financial institutions do not establish public law status, There are still many concerns about public participation in legislation.

Previous research on international financial Law focused on the organization of countries and countries, for ordinary people to participate in International financial legislation is of very little concern. for The reason this, This article will first analyze the inevitability of public participation in international financial legislation, Resolving various factors promoting public participation in legislation; Second, analyze the realistic path of public participation in legislation, Interpretation International The current results and problems of financial institutions; and then explore the possible path to public participation in financial legislation, and proposes a specific Perfect Suggestions; finally combined with the realities of China, make a strategic choice for the future.

## 2. The inevitability of public participation in international financial legislation

State-centric traditional international law does not focus on private participation, The international financial institutions are therefore responsible only for their members, No The must examine the representativeness of the public. with in-depth development of international law Theory and practice, international community gradually takes public participation as The important criteria for measuring the legality of the organization. The inevitability of this change is mainly embodied in the following aspects of the.

First, allow public participation in the international financial legislation process, is a necessary choice for global governance trends. Global Governance Focus and promote the relevance of international transactions, requires the public to participate in international affairs as an emerging governance body. International financial problems have long been

limited to financial markets themselves, with Labor, Environment, Grant, Health, areas such as food safety and education exist. The is closely associated with. Financial and social life are inextricably linked to greater diversity of subjects., public should be with traditional governance. The Principals work together on global transactions. so, during the functioning of international organizations, The public has the right to live in secret with them. cut related issues request. Public participation can bring new legislative opinions and information to financial institutions, for easy development out more reasonable rules, to improve legal effectiveness.

Second, the sensitivity and heterogeneity of international finance determines the public in this. The important role of the domain. The International financial Institutions' response to the is too slow., cannot respond to unexpected events in time. and, the professionalism of the international financial problem for the governing body of the Technical Requirements higher, Officials on the government's behalf are also struggling to pinpoint the. and the general public on related issues more with sensitivity and professionalism, can improve the quality of financial legislation, Effects and sustainability. [«and, with the globalization of the economy Deep development, Public awareness of activism is growing, also improves governance.

last, with the rapid development of international human rights law, Many international treaties require States parties to guarantee the right of public participation. International Law is considered the minimum standard for due process, It breaks the geographic limits of human rights protection, Public participation in the laws affecting their lives. The is set up as part of civil and political rights.<sup>[7]</sup> International Covenant on Civil and Political Rights (following abbreviation Convention) "" "" page This section stipulates: Any citizen should have the right and opportunity to participate in public affairs. International Human Rights Commission considers "Convention" first page section and all aspects of public administration, includes international level, also includes a domestic, Regional, or Local level. Lyon declaration "" Action scheme "" century Agenda clearly stipulates the public's right to participate in international organizations. "Universal Declaration of Human Rights" European human Rights approximately "North American Free Trade Agreement" and "Rio Declaration" the also affirms the public's right to participate in public affairs. declaration of the year Almaty Charter Guidelines It further perfected the system of public participation in international law, and developed a more detailed standard.

### **3. Realistic path for public participation in international financial legislation**

The realistic path for public participation in international financial legislation is divided into two types of: is directly involved in, is the legislative process of the Public participation organization preface; Two indirect participation, affects relevant legislation through judicial or quasi-judicial means. mDbut, These two paths are for public participation. For Space Limited, difficult to play a substantive role.

#### **3.1 Direct Public participation in international financial legislation**

Practice, More and more international financial institutions are aware of the importance of public participation, and give them a lot of support and inclusive. current, Some international financial institutions have designed several consultative stages for this purpose., includes facing the before the final bill is enacted Public comment procedure. the World Bank 2006 year the Draft governance and anti-corruption policies "experienced the largest scale worldwide for negotiation. from the government, Public and other international organizations 3200 multiple delegates in All countries to talk, also holds the 4 Sub-state Inter video conferencing and internet feedback. Inter-American Development Bank 2009 Year consultation on Accountability, The also accepts the from A country's Out of the The name represents the. Although the size of the consultations cannot represent the depth and validity of public participation, But at least the Open attitude of international financial institutions to this issue. however, Civil society as a whole the voice of the international arena still very much its weak, The extent and predictability of public participation in international financial institutions still have the following problems.

First, The public scope of the participation in international financial legislation is very limited. Practice, Basel

Committee, IOSCO, UNCTAD and organizations like OECD all express their willingness to accept public participation. OECD self-Company guide, Food and agriculture policies and Green to incorporate public opinion in projects such as the recent, to confirm tax jurisdiction issues, OECD ask The public about VAT grass comments on the case. UNCITRAL allow experts and other members to participate in an investigation with permission, and offer a statement to the work group policy. However, We cannot be overly optimistic about the scope of the group that can participate. When the Basel Committee asks for comments on its rules for, Participating groups are mainly large banks affected by the proposal, The general public has virtually no comment opportunity. (W same as, year, IOSCO request public comment on Auditor's Advisory report, It receives the comments come from Enterprise rep, Public concerns such as labour and health have not been equally protected and valued.

Second, Although international financial institutions have developed procedural rules for public participation, but not consistent. example, "IMF and the World Bank have divided the interaction with the public into promotion, Dialog and consultative and partnership three forms, or even allow public participation in the World Bank and IMF Joint annual meeting. However, Both clearly clarify that this does not mean that the public gets the Permanent consultative status or accreditation, deny public formal participation right. OECD Although over the past 10 years the enhanced with Public Interaction, But public participation is not established as a legal procedure, acceptance of public participation in legislation because of different projects The differs from. that is, Even if some of the agencies have already implemented public, Transparent and multi-party program standards, But the organization and do not publicly acknowledge that they developed administrative practices, also did not form a coherent, Comprehensive, effective management. The nature of the temporary program is a reflection of the international financial institutions' hesitation and concern about public participation in legislation, This leaves the international community with the impression that: legislation The generation of the power of the is largely dependent on the public's ability to exert sufficient political pressure.

last, The negotiation process is subject to the strength of the negotiating parties, International financial institutions are just Reference Public suggestions and comments, in weigh its own pros and cons, The public's offer can still be rejected without any reasonable explanation. that is, said, Public participation in financial legislation although ostensibly licensed by the international financial institutions, But the final legislative result does not reflect their claims. This practice essentially equates to virtual public legislative Power, The result is that the public and the international financial institutions between trust crises, Initiatives to combat Public participation. and, The contempt for public appeal will hinder the agency from all aspects. Financial risk, inability to effectively manage global financial markets. Total, No institutional protection in public legislation conditions, bottom-up self-regulation in fake form, Global financial governance will be empty talk.

| ii. Public Participation in international financial legislation

decisions and interpretations of judicial or quasi-judicial bodies can fill gaps in the written specification, can also have the inside of an existing rule to refine or refine. and, ICSID and WTO The practice of indicates that, jurisprudence can be an extremely important and stable reference in the latter cases source. so, This indirect participatory approach has a negligible impact on international financial legislation.

In recent years, cases in which the public interest is impaired by the decisions of international financial institutions. For example, in Kenya and Zimbabwe's World Bank loan project, One of the loan terms is that the country incorporates a royalty system within its medical system. Royalty system Although to some extent improve the efficiency of medical services, but also causes poor people to lose treatment opportunities because they cannot afford to pay. not complete All statistics, because of the mandatory royalty regime, has caused 3 million child deaths. [Ten] (1>176-179)) Scholars generally agree that, agency The behavior involves a scope that is beyond the financial entity directly regulated by, Public losses suffered by institutional action, have rights lodge a claim against it. [Ten] beer<sup>5</sup>) theoretically, the public can be accountable to institutions in two ways: one is to the international financial institutions Check for department complaints, Second is to sue the state court. w] however, Current Accountability still has the following problems.

First, Most international financial institutions tend to limit their human rights obligations to the Articles of association, Unwilling to accept international human rights Treaty Constraints. For example, IMF Legal advisor made a statement, IMF No obligation to ensure that its actions do not negatively affect human rights, no guarantee that the borrower will not be prevented from fulfilling human rights obligations.<sup>[1 (P61)]</sup> Fran § oisgiamdtifor Economy, Social and text Rights Convention for IMF The legal effect of is a view of, the Convention Bar ② indicates that, If this convention and the Fund Contract conflicts with, The effect of the latter is precedence. [] (tm) Follow this statement, Medical care related to social rights, Human rights issues such as education are not in IMF The scope of the action.

Second, Although a number of international financial institutions have established specialized inspection departments, But this complaint mechanism cannot be public provides effective relief. (1) After the applicant filed a complaint, do not have permission to know the investigation progress and specifics of the inspection department, There is no right to evaluate the response of the management department. (2) The inspection department can only review the Organization's compliance with the loan agreement, to does not have the right to dispose of an institution's violations.<sup>3]</sup> (tm) Even if they think that the institution violated the relevant financial law, Decide whether to take The power to save the the relief measures remain in the hands of the board of directors. (3) Checking the manner in which departmental staff are appointed weakens its independence. work must be appointed by the person responsible for the international financial institution, and is approved by the Executive Board of Directors to take office, So they must be in ais affected to a degree by the owner or the will of the directors.

last, theoretically, The courts of Member States have jurisdiction over violations committed or related to their citizens in their territory Right, But this last protection is still a fake. Practice, with IMF the International financial institution represented by is defined in its statutes provides absolute immunity; The Asian Development Bank, etc., recognizes the jurisdiction of the domestic courts, But a very restrictive bar is set On. and, Even if international financial institutions accept the jurisdiction of domestic courts, national courts often use function Necessary is rejected by the.

## **4. Public Participation in the improvement of international financial legislation**

Public Participation in international financial legislation faces many institutional barriers and realistic dilemmas, To change this Situation, In addition to a For Growing international environments, need a sound legal framework to support public participation. so, international community from the following aspects of are perfected.

### **4.1 to achieve the stability of public participation in legislation**

the best way to achieve the stability of public participation is to codify the rules, a written system for public participation. public There is no contractual relationship with the organization, But they have the right to ask the Agency to recognize its legal status in law. MP) International financial institutions although entrusted with the task of promoting development, but is usually concerned with the borrower's client, and not directly affected by the projects social group. Code of Procedure rules for improving predictability of international financial legislation, making public participation in legislation system security mechanism. (1) the rules of codification can reduce the institution's contention for allowing public participation in legislation. In fact, this class controversy is divorced from the original purpose of the law, to cause the argument to be exhausted, and the end result is often the international financial institutions making the Sell step. The debate over the procedural issues masks the parties' attitudes to substantive issues., or reducing the divergence of substantive legislation Express. (2) codified rules to achieve greater consistency, reduce discrimination against political or controversial groups, issue such as ILA agree with, Procedural rules of international organizations can prevent abuse of discretionary power, reduce legal errors or recognize Set fact error. (3) writing a participatory right to improve the clarity of the Organization's operations, Improve the ability to work within an organization. because current rules are ad hoc, A lot of staff and experts are also temporarily called, cause public participation in financial legislation party The ability of the face is not substantially improved. In addition to the World Bank, These rules are usually based on the advice of an external consultant for the organization, and These advisors to the law of

the organization, Destination, The purpose and the understanding of the Organization itself are not complete.

because of this, International financial institutions should introduce the relevant system of public participation legislation as soon as possible, This includes the methods that are involved mainly Law Foundation, participation Form, primary rights and identity authentication standards, and so on. of course, This is not a requirement that an agency must make a separate laws, You can choose to embed these specifications in the relevant files for your organization. Practice, an Economic and Social Council, World Health Group fabric and European Commission in this regard the level of institutionalization is relatively advanced, Other international financial institutions can combine their own characteristics Based on, Follow their example.

## 4.2 ensure public participation in the order of legislation

International financial institutions should set about institutionalizing rules for public participation in legislation, The rights requirement also seeks to be detailed in detail. Those who think, the ideal legislative process should include: Notification-Define the contents of the Consultation-Negotiation-Draft-Submit a comment on the draft Negotiate-response comment-Publish Final Act. Practice, International financial institutions have difficulty implementing all program requirements, But in some steps Flash has been made Progress, so, This article only launches a discussion on steps that should cause special attention., before the legislative process officially begins, allow public participation in the direction and objectives of planning legislation. Increase public in scope Scheduled dialog, helps the parties to understand the issues before the law is formalized, and to give priority to items. and, This approach avoids provoking controversy over issues such as necessity in the subsequent phase.<sup>[2]</sup> Health, Environment, Labor and so on relate issues with international financial markets, in this The phase should be put on the agenda. It is Best for the international financial institutions to be able to predict controversial issues that may arise in the course of the development of the law, and try to make compromises or reduce inconsistencies. simultaneous, also How to guide the public to participate in legislation, for effective communication and dialogue during future substantive consultations or deliberations.

Second, in the comment stage, International financial institutions should solicit feedback by means of a combination of online consultations and face-to-face consultations comments. The advantage of collecting comments over the internet is simplicity, shortcut, facilitates public effective tracking of legislative progress and related message. however, Internet cannot replace face-to-face consultations, The former is not even considered valid, sincere communication with Interactive. There is the project implementation are most vulnerable to legal adverse effects, also important governance principals. but due to cultural levels and technical devices, Their participation in the online review will be hampered by many obstacles. so, International financial institutions should the opportunity to create a Public participation Agency meeting. Such opportunities include two: is to be expanded by agency staff and public representatives towards, listen to their suggestions; Two is an organization's executive director or senior management who interprets specific issues, is The public provides opportunities to communicate with the top of the organization.

Third, International financial institutions after collecting and considering public comments, should increase the response stage for comments. current the usual Practice is, Even if a public comment program is set up, also refuses to give any substantive response. so, Public not aware of machine does construct seriously consider their views, especially when the final file is not materially changed from the original draft, This response more necessary. International financial institutions sometimes briefly summarize and publicize public comments and institutional Responses, But that's not enough to call it a fully valid dialog. If the comment cannot be specifically answered, Public will not be able to determine the validity of there view. Country the inter-financial institution should classify all comments, and details the organization's comments on the comments, includes the final decision. The reason for the comment that is not reflected in the policy.

Fourth, Increase the transparency of the Organization in the legislative process. for the public, Information disclosure is a test of international financial institutions assignment Important criteria for the right commitment, also an important part of public discourse. Although some international financial institutions have started to change center, But

still excludes the legislative process from the scope of the information acquisition.[<sup>2</sup>] (p-)for the public,true empowerment is to benefitstakeholders provide an effective way to obtain information.institutions should set up specialized information platforms,Maximize decision making procedures.This requires not only a dependency from the informationMore extensive understanding of the transparency of the decision-making process from a broad perspective,including final decisionSet,Why and how to vote.

### 4.3 the possibility of increasing publicaccountability

International financial institutions and domestic courts should focus more on considering the needs of the public.,provides an afterthought for institutional legislationGood way.so,can choose to improve the feasibility of accountabilityby improving the following aspects.

First,based onexisting accountability practices,organizations should further refine the complaint platform,Toget the public to better seek relief.In fact,Agencies have taken steps to improve the public relief system.For example,,2015year-----()7month1Day,the World Bank inSetEnvironment and social standards for investment project financingdraft,highlighting through the borrower and the bank's complaint mechanism for theaffectedThe social public provides more effective remedies,and resolve compensation problems in a timely manner.theWorld Bank Inspection Group is attempting to increase the requestor's participation in the entiresurvey program,and accept feedback from the public about the results of the review.[<sup>102</sup>]I think,Theinternational community can refer to the countryInterregional Investment and trade practices,Building International financial dispute settlement mechanism.under this mechanism,public option to pass mediation orThe way of arbitration seek relief.This will not only reduce the impact of political factors on the program,can also be enforced by the ruling resultto protect the implementation of public rights.

Second,AccountabilityProcedures for international financial institutions should be increased byFriends of the TribunalLink.Amicuscuriae in International Court of Justice,International SeaForeign Court,,WTOandtherehas been a better development in international organizations such asNAFTA.start of amicus curiae,benefit to enforce the machinerefactoring Democracy,Mitigating information asymmetry and so on.ignore private rights to prevent organizations from focusing too much on national interestsBenefits,should allow the public to use theFriends of the Tribunalto participate in accountability.also,organization shouldhaveamicus curiae"submissions all"Considerations and responses of the face.In fact,,amicuscuriaeis also an effective way for the public to influence financial legislation\_.If the comment bookThe contents of the are accepted,Increases the likelihood that future issues will be regulated through legislative procedures.

last,national courts need to change past evasive attitudes,Proper exercise of jurisdiction,to prevent or punish human rights violations.Human rights obligations as mandatory statutes have been setupUnited Nations Charter,Obligation of higher order.Even if you cannot determineThe legal level of the principle of the humanrights,It is also impossible to draw conclusions that international human rights law falls within the expected interests of international organizations.If a court decision machineconstructLegal liability for its behavior,The organization is obligated to amend the relevant laws;If the court is merely the law or line of the institution

to challenge,So organizations will try to avoid similar contradictions in the future legislative process.

## 5. China Select

2008Theyear after the financial crisis,China's role and position in the field of international finance gradually increased.2015yearmonthAsian InvestmentLine is the world's first China-dominated multilateral financial institution;China as2016year9MonthGonlyThe rotating presidency of the summit;2016yeartenMonth1Day,Therenminbi is officiallyIMFA member of the SDR currency basket.These facts fully demonstrate that China hastheability to participate in and influence global financial governance with the.due to the expansion of private life and the potential impact of international law on their lives,The public has played a part in the role of the subjects of international law.[/]withPublic participation in global financial governance,to International goldfinancial systemGame rules""exert more influence,is the inevitable choice for safeguarding our interests.and,because the public has

aFlexibilityprofessional and informal features, to enable it to take measures that are difficult or inconvenient for a country or region. however, legacy regret is, My government didn't make full use of the public this "mouthpiece", Causes our public in the international financial legislation process to send The The effect is very limited. This is in contrast to our traditional public attention., More important because of our country The public groups within the jurisdiction that represent national interests are very weak., Cannot arouse the attention of the international community.

I thought, China can develop its own public population in two ways:, seeks to impose a on future international financial legislation More effects. on the one hand, the Chinese government should be aware of the universality of the use of public expertise and sources of information, 'Foster' High-quality public group, to increase their international influence. If scholars suggest, by cultivating Chinese NGOs in the country ability to participate in politics, To have the strength to fight against NGOs in developed countries. TM China should be set up at home or "" Education "" Public associations related to the financial industry, such as financial academic community, Financial Rules, think tanks, etc., enable them to be in the next international making more noises in the financial legislation process. Public organizations are required to embody the demands of different groups of interests, also have rational standing Farm and public accountability, This requires the state to strengthen its daily civic education., and providing the public community with a full range of material and spiritual security. [-] other Aspect, except for a growing political and economic environment, requires a comprehensive legal framework to support Public Participation. China should draw on the experience of developed countries, in reducing access thresholds for non-governmental organizations and other public groups when, Building a complete access management system. Administrative measures for access can include: Reasonable classification of public groups, has a pin set up periodic reports for sex, authentication, System of peer review. for public groups with the ability to participate in international financial legislation, providing comprehensive Information Support, and keep track of participating progress and results. through reasonable supervision and support, Increase public group professional, system and stability, to ensure that the public can play an effective role in international financial legislation.

Comment:

① The International financial institutions referred to in this article refer to all treaty- and non-treaty-type that play a role in international financial legal regulation International Financial organization, as UN specialized agency's IMF, World Bank Group, Regional multilateral Development Bank, G-20, Financial Stability Board, Basel Committee, International Securities Commission Organization, OECD and UNCITRAL, and so on.

② Bar: No part of this Convention shall be construed as prejudicial to the United Nations Charter and the Organization of the specialized agencies of the Constitution of the Union obligations of the institutions and specialized agencies of the State in respect of matters covered by this Convention.

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