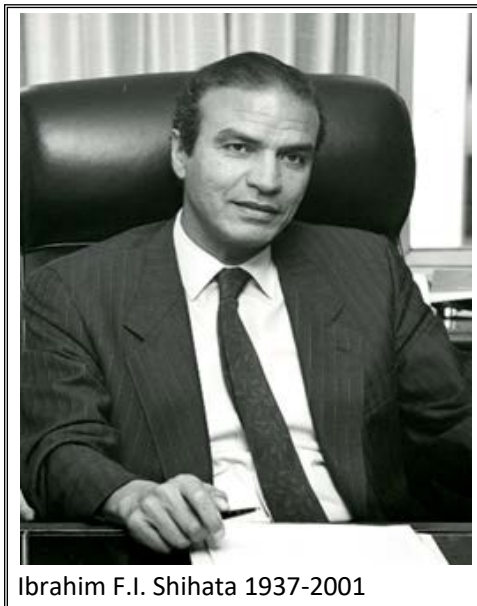

IBRAHIM F. I. SHIHATA

Senior Vice President and General Counsel of the World Bank 1983-1998

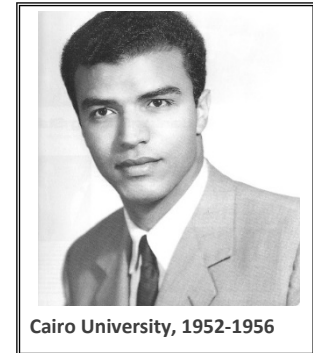




Ibrahim F.I. Shihata 1937-2001

This document was authored by the World Bank’s Legal Vice Presidency as part of a larger commemoration of Ibrahim F. I. Shihata and his contributions to the World Bank Group. This commemoration was part of the “Law, Justice and Development Week 2019” which also saw a dedication ceremony in which the former Board Room was renamed in his honor.

Ibrahim F.I. Shihata served as Senior Vice President and General Counsel of the World Bank from 1983 to 1998 and as Secretary General of the International Center for Settlement of Investment Disputes (ICSID) from 1983 to 2000. During his tenure, he led the initiative to create the Multilateral Investment Guarantee Agency (MIGA) and played a major role in the establishment of the World Bank Inspection Panel. He also chaired the task force that prepared the World Bank Guidelines on the Treatment of Foreign Direct Investment and helped establish the Global Environment Facility (GEF).

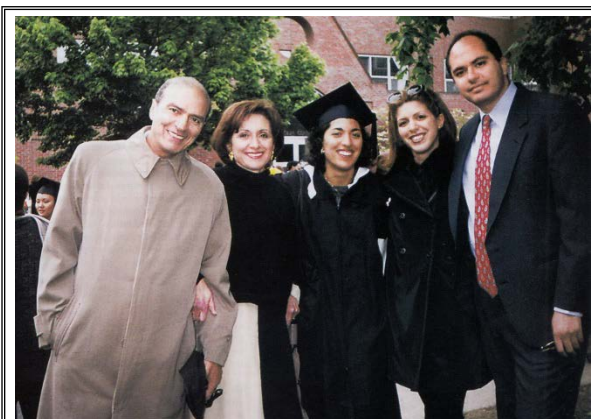


As the General Counsel of the World Bank, Mr. Shihata was actively involved in policy discussion and formulation, helping the institution respond to a host of development needs not envisaged when the World Bank's Articles of Agreement were written. He had a major impact on the institutions he served, and many saw him as personifying the "rule of law" in the world of international finance and development.

Personal History

Ibrahim F.I. Shihata was born on August 19, 1937 in Damietta, a small town of Lower Egypt on the Mediterranean coast. He studied law at Cairo University and began his career as a member of the Egyptian *Conseil d'Etat* and also served as a member of the Technical Bureau of the President of the United Arab Republic of Egypt. He later moved to the United States and obtained his doctorate from Harvard Law School in 1964. Upon returning to Egypt, he joined the faculty of the Ain-Shams University, Cairo, where he taught international law in 1964-1966 and 1970-1972.

In 1966, he became the legal advisor of the Kuwait Fund for Arab Economic Development. In this role, Mr. Shihata was the principal drafter of the constituent treaties of several regional development finance



Graduation of Nadia Shihata, Tufts University, 2000.
Ibrahim Shihata, Samia Farid Shihata, and their children
Nadia, Yasmine and Sharif.

institutions, such as the Arab Fund for Economic and Social Development, the Inter-Arab Investment Guarantee Corporation, and the Arab Bank for Economic Development in Africa. Mr. Shihata was also the main drafter of the Agreement establishing the OPEC Fund for International Development (OFID). He served as the first Director-General of OFID and, under his guidance, this development assistance facility, which was intended as temporary, was transformed into a permanent institution. Mr. Shihata also served as the chairman of the committee that wrote the Agreement to create the International Fund for Agricultural Development (IFAD). He then became a member of IFAD's Board of the Executive Directors.

Mr. Shihata married Samia Farid Shihata, and two of their three children followed his footsteps and became lawyers. Their third child is a journalist and editor.

Joining the World Bank

Mr. Shihata became the General Counsel for the World Bank and Secretary-General of the International Centre for Settlement of Investment Disputes (ICSID) in 1983, an eventful era for the World Bank and the world at large.

The 1980s marked the early days of the global debt crisis, and the Multilateral Investment Guarantee Agency (MIGA) did not yet exist. At that time, environmental concerns still did not receive adequate attention, and the subject of governance was not yet integral to international discourse on development. Mr. Shihata's pioneering thoughts and visions in these topics helped shape the organization's course of action and the path forward for the World Bank.

As General Counsel, he authored more legal opinions than ever before. With his broad knowledge of history, Mr. Shihata's legal opinions enabled the World Bank to respond to the rapidly-changing needs of its membership. Thanks to the framework laid out in those opinions, the World Bank became actively involved in legal and judicial reform issues.

Creating the Multilateral Investment Guarantee Agency

One of Mr. Shihata's major contributions to international development was the creation of the Multilateral Investment Guarantee Agency (MIGA). During his first week at the World Bank, the Managing Committee's meeting agenda included a discussion about putting an end to the initiative that would become MIGA, given the little support it received from the Board. Developed countries were opposed to the proposal as they had their own agencies to guarantee and insure private investors, while developing countries perceived it as another international organization standing with foreign investors against them. Mr. Shihata sought to undertake this initiative as he had been involved in the creation of the first agency of this type, the Inter Arab Investment Guarantee Corporation, in 1974.

At the time, foreign investment was concentrated in only a few countries and its volume was in historical decline. An agency supported by the World Bank and receiving the full confidence of both capital exporting and importing countries could, in Mr. Shihata's view, reverse that trend to the benefit of both sides. In his view, MIGA could play a significant role by rebuilding confidence among investors in developing countries by breaking the psychological barrier that magnified political risks.

Two years after Mr. Shihata's initial Managing Committee meeting, the Board of Governors unanimously approved the Convention establishing MIGA. The Convention entered into force on April 12, 1988.

In his book [*MIGA and Foreign Investment*](#), Mr. Shihata shared his efforts to create MIGA and his vision for its future. The publication has been a valuable resource for experts in foreign investment, and a source of legal interpretation for matters concerning MIGA.

Legal Treatment of Foreign Direct Investment Guidelines

Mr. Shihata played a major role in preparing the Bank's Guidelines for the Legal Treatment of Foreign Direct Investment. At the urging of the Development Committee, a Committee of the Generals Counsel of the World Bank, the International Finance Corporation and MIGA was established to prepare the guidelines. The Committee was chaired by Mr. Shihata, where he took the lead in drafting the guidelines which were later issued in 1992 with the support of the Development Committee. These guidelines were decisive in the preparation of investment laws and treaties and were often cited in the awards in investment arbitration.

Creating the Global Environmental Facility (GEF)

The idea for a Global Environment Facility was first proposed in a 1989 meeting of the Development Committee. A majority of the work on the establishment and reconstitution of the GEF was accomplished by the World Bank Legal Vice Presidency, and more specifically by Mr. Shihata. The GEF was established in 1991 as a pilot program within the World Bank, and many observers saw it as the beginning of an important shift in multilateral policy toward incorporating environmental concerns into development assistance.

Creating the Inspection Panel

During Mr. Shihata's tenure, there was pressure both within the World Bank and from Washington-based non-governmental organizations (NGOs) to establish an independent mechanism of inspection for the preparation, implementation and approval stages of World Bank projects. In the eyes of NGOs, it was important for the panel to be independent, whereby it would issue decisions binding on the World Bank, and with the institution's role limited to financing the panel. World Bank management, on the other hand, sought a mechanism that would remain internal and respond to senior management. Mr. Shihata developed a proposal that could balance the NGOs' position with that of the World Bank in creating a unit independent from management yet not too detached from the World Bank. In 1993, the Board approved the final draft resolution, written by Mr. Shihata, establishing an independent Inspection Panel. According to the resolution, the Panel was set to investigate the World Bank's compliance with its own policies and procedures. This was the first of such initiatives for an international organization.

His first book on the subject [*The World Bank Inspection Panel*](#), published in 1994 shortly after the resolution establishing the panel was adopted, recorded the developments and deliberations that led to the creation of the panel. It analyzed its origin, functions, and objectives. In the year 2000, Mr. Shihata published [*The World Bank Inspection Panel in Practice*](#) where he shared how the resolution has been applied in relation to increased demand for transparency and accountability.



ICSID Management, October 16, 1987

Secretary-General of International Centre for Settlement of Investment Disputes (ICSID)

In his role as Secretary-General of ICSID from 1983-2000, Mr. Shihata oversaw a 60% growth in membership, with 132 countries along with an extensive increase in the Centre's caseload. Mr. Shihata also helped strengthen ICSID's research and publications activities, notably by founding the [ICSID Review-Foreign Investment Law Journal](#).

Mr. Shihata reviewed the rules of ICSID and provided amendments to these, which were approved in 1984. He also brought the meetings of the Administrative Council from behind closed doors to the front stage during World Bank-International Monetary Fund Annual Meetings. This brought more visibility to ICSID and helped it become better known and seen as an institution of the larger World Bank Group.

Law and Development

In 1969, when Mr. Shihata was a legal advisor to the Kuwait Fund for Arab Economic Development, he published a seminal paper entitled "Role of Law in Economic Development: The Legal Problems of International Public Ventures." Among others, he observed in the article that economic development creates "a great challenge for the legal profession, a challenge which is yet to be fully answered." Addressing the issue of "why law in development?" rather than capacity building *per se*, Mr. Shihata concluded that law is not a negative tool which merely reflects society in a given stage, but rather a dynamic mechanism that can positively respond to and influence society's growing needs for organization and development. Mr. Shihata's proactive approach to using law as an instrument of change ultimately enhanced the role of law in policy-making and in the overall framework of the World Bank.

Due to his prolific writing about law and development and the role of lawyers in the development process, the co-initiators of the International Development Law Institute (IDLI), later International Development Law Organization (IDLO), approached Mr. Shihata in 1981 when he was the Director-General of the OPEC Fund in Vienna. The Institute was eventually established in 1983 as a non-governmental organization. Mr. Shihata was an informal advisor to the organizers, helping assemble a distinguished Board of Directors. Later, during the first meeting of the Board of IDLI, Mr. Shihata served as the Chairman of the Board.

Today IDLO offers invaluable training and technical assistance for legal professionals in developing and transition-economy countries. The success of the organization is in great part due to the role played by its first Chairman of its Board of Directors, Mr. Shihata.

Legal Opinions as a Means of Change

Mr. Shihata understood the challenges that could arise from a modern institution required to operate under a charter written in the past. He believed the establishing documents could no longer be applied literally, given that the world, the people, and the nature of relationships were in constant change. Mr. Shihata was aware of the need for revisions, as the rules needed to adapt to these changes through means of what he called “purposive interpretations.” The principle behind purposive interpretation is one that calls for the retention of the purpose or objective of the Articles without violating the explicit words of the text. It is under this approach that many new development concepts could be introduced to the World Bank. Mr. Shihata’s legal opinions helped transform how the World Bank carried its mandate.



Political Activities Prohibited

One of Mr. Shihata’s famous legal opinions is the “Prohibition of Political Activities in the Bank’s Work.” Through this legal opinion, Mr. Shihata set the appropriate boundaries of what separates the World Bank’s mandate from political affairs. He believed that the Bank is an intergovernmental and financial institution that relies on borrowing from the market and should not be subject to the vagaries and the double standards of politics, which are inevitable. According to Mr. Shihata, insulating the Bank from partisan politics and from the short-term interests of its members was a very important pillar on which the institution was founded. He strongly considered it part of his job to maintain that distance for the best interests of the institution.

Stabilization Loans

During the Asian Financial Crisis in 1997, Mr. Shihata raised the possibility for providing affected countries “stabilization loans”, a new initiative which had no legal prohibitions. Mr. Shihata’s legal opinion drew on an early interpretation of the Articles, which made clear that the World Bank could lend for purposes other than the restrictive and narrow understanding of the concept of projects (mainly associated with engineering projects) when special circumstances existed, provided that the operations would fall within the purposes of the World Bank as envisioned in the Articles of Agreement.

Debt Reduction Operations

Another of Mr. Shihata’s legal opinions underpinned the debt reduction operations of the World Bank. In 1982, Mexico was facing a debt crisis and it became clear that it could not be solved unless the debt burden was

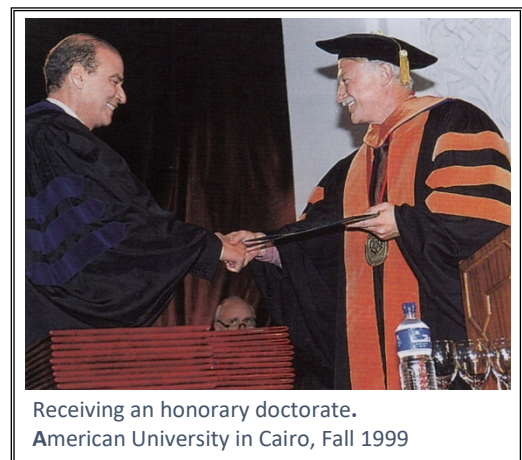
reduced. The World Bank's Articles however would not allow it to be a debt refinancing channel. Mr. Shihata put forth an explanation that served to place World Bank support for debt and debt service reduction operations within the Articles' framework: a debt reduction operation would only be permissible if it would assist the country in receiving or making investments for productive purposes which would not otherwise take place. As a result, the World Bank could support such operations under the overall financing plan and appropriate adjustment policies that not only reduced the debt service obligations to a manageable size; but would also allow for economic development and put a heavily indebted country back on the path of sustainable development.

To this day Mr. Shihata's views of the World Bank's Articles of Agreement continue to serve the institution and keep the World Bank relevant in a world dramatically different than the one envisioned by the drafters of the Articles.

Legal Scholar

Apart from his professional occupation, Mr. Shihata was a prolific writer with three honorary doctorates in law. Mr. Shihata's Harvard Law School doctoral dissertation "The Power of the International Court to Determine Its Own Jurisdiction" has been observed as an "exhaustive work" that until now remains a leading treatise on the International Court of Justice.

Mr. Shihata published close to 30 books and over 200 essays. His eleven books on matters related to the World Bank's work made him a much-quoted legal writer on the institution he served. His last book "[*The World Bank Legal Papers*](#)" compiled the legal opinions he rendered as General Counsel. Mr. Shihata was an exceptional lawyer who laid many foundations of international finance and development law.



Receiving an honorary doctorate.
American University in Cairo, Fall 1999

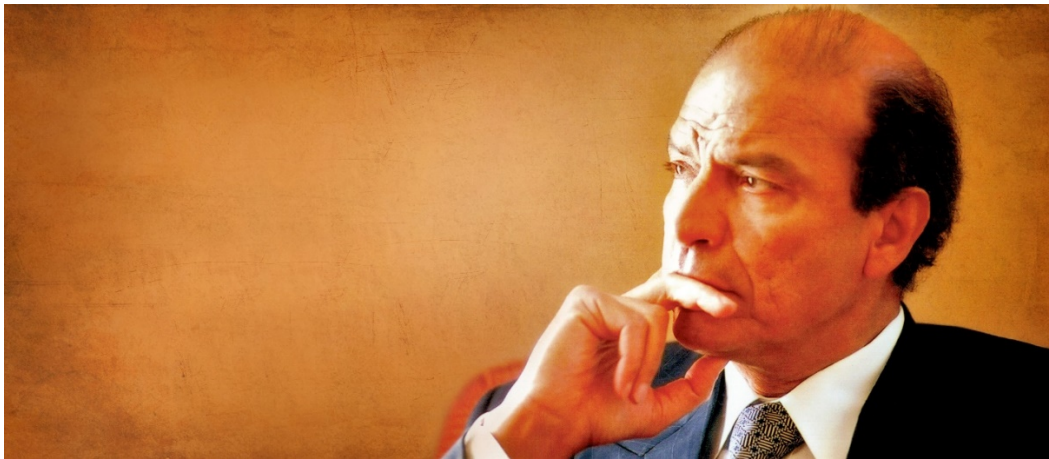
The Story of a Legend

During his time, Mr. Shihata transcended the perception of the role of the General Counsel at the World Bank. He set the highest standards for what a General Counsel of the World Bank should be: to first serve its clients, the most vulnerable of the world. He also sought to maintain the integrity of the World Bank as an institution, and to remain honest towards the World Bank's stakeholders. His legacy is rooted in his excellent skills as a lawyer. He brought to the job of a General Counsel, the dedication of the teacher, the knowledge of the scholar, the experience of the practitioner and the wisdom of the statesman. Mr. Shihata believed that the General Counsel of the World Bank should be detached from what he or she likes or dislikes, and look into what is required in the Articles of Agreement under the applicable rule of law to take a position that can be legally defended. He was a man of integrity, objectivity, and loyalty to the mission of the World Bank in his service to

the Presidents and Executive Directors of the Bank. Respect for the law was his central concern, not just in his writing and speaking, but in his thinking and his decisions in his daily professional conduct. James Wolfensohn, former President of the World Bank Group, described him as “one of the greatest international jurists of the 20th century.”

Departure

Mr. Shihata retired in 2000 as Senior Vice President and Special Adviser to the World Bank's President. On May 28, 2001, Mr. Shihata passed away in Washington D.C. He is survived by his wife and their three children.



IN MY ROLE AS THE GENERAL COUNSEL AND SENIOR VICE PRESIDENT IN THE BANK, I HAVE NOT SIMPLY ACTED AS THE SPOKESMAN FOR THE MANAGEMENT, I HAVE ACTED AS THE SPOKESMAN FOR THE LAW AS I UNDERSTAND OR CONCEIVE IT; NOT ON PERSONAL PREFERENCES BUT ON RESEARCH AND ANALYSES WITHIN THE LEGAL DEPARTMENT. AND IF YOU TAKE THAT POSITION YOU ARE NOT NECESSARILY A VERY POPULAR PERSON. BUT, IN CHOICE BETWEEN BEING POPULAR OR BEING CREDIBLE, I CHOSE THE LATTER.

Transcript of oral history interview with Ibrahim F. I. Shihata held on May 23, and 24, 2000
