

2001

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Recommended Citation

Daoud L. Khairallah, *Dr. Ibrahim F.I. Shihata - A Memoir*, 35 INT'L L. 1337 (2001)
<https://scholar.smu.edu/til/vol35/iss4/2>

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Dr. Ibrahim F.I. Shihata – A Memoir

DAUD L. KHAIRALLAH*

Dedicating the London Forum to the memory of Dr. Ibrahim Shihata could not be more befitting. At his untimely passing, Dr. Ibrahim Shihata left the world much richer with his enormous contributions. It is difficult to think of a person who remains a better authority on law and development, or who had a greater impact on this field.

With his brilliant mind, his broad knowledge of history and human nature, his remarkable power of persuasion, his deep understanding of the role of law in shaping organized human society, he made an indelible impact on the policies of many developmental institutions with which he was associated. Dr. Shihata was a tireless legal architect and an effective institution builder.

Prior to joining the World Bank, Ibrahim Shihata made substantial contributions to shaping the policies and practices of the Kuwait Fund for Arab Economic Development, which he joined as legal adviser in 1966. During his eight-year association with the Kuwait Fund, he played a leading role in the creation of the Inter-Arab Investment Guarantee Agency, which soon became an important player in inter-Arab investment flows. Following the rise of oil prices in 1973, when members of OPEC met to discuss the creation of what became the OPEC Special Fund, Ibrahim Shihata was on loan from the Kuwait Fund to the delegation of the state of Kuwait to the Ministerial Meetings that created the OPEC Fund. Due to his active and effective participation in the deliberations of these meetings and in recognition of his sound advice and legal expertise, he was entrusted with preparing a draft agreement of the OPEC Special Fund.

In describing the result of his efforts, Abdulatif Al-Hamad, the President of the Kuwait Fund at the time, gave a glimpse of Dr. Shihata's particular skills. "He crafted a document," Al-Hamad wrote, "with a great measure of ingenuity and creativity and in a manner which accommodated the views and concerns of the members. He was able, with his exceptional ingenuity, to find a compromise that gives every country political credit without, in this situation, putting additional financial burden on them."¹ It is not surprising that as a fitting

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1. Abdulatif Y. Al-Hamad, *Ibrahim F.I. Shihata: The Lawyer as Dedicated Practitioner of Development, in LIBER AMICORUM IBRAHIM F.I. SHIHATA 25 et seq* (Sabine Schlemmer-Schulte & Ko-Yung Tung eds., 2001).

tribute to Ibrahim Shihata, he was unanimously appointed the first Director-General of the Fund in the inaugural Ministerial Meeting of the OPEC Special Fund.

By the time he joined the World Bank in 1983, Ibrahim Shihata was a renowned figure in the world of law and development. He did not just fill the position of Vice President and General Counsel, he elevated it with his intellect, legal knowledge and vigorous and persuasive presence to a level that is difficult to emulate. And when he ended his activities at the World Bank, after seventeen years of ceaseless efforts, he left behind an unmatched record of achievements. I will mention here only a very few of Dr. Shihata's achievements.

The Multilateral Investment Guarantee Agency (MIGA) owes its existence in large part to the determination, innovative skills, and tireless efforts of Ibrahim Shihata. Although the idea was originally hatched at the World Bank, when Dr. Shihata came on board the Executive Directors of the Bank had given up on its feasibility and were very skeptical when he undertook to revive and give body to a practically dead idea. Beyond being the main legal architect of MIGA, he was the principal strategist for bringing it into existence. His book *MIGA and Foreign Investment*² is a standard reference for foreign investment and a reliable source for all matters related to the Agency.

The Global Environment Facility (GEF), the world's largest environmental fund, benefited from Ibrahim Shihata's ingenuity, innovative skills, and keen insight. The GEF is a partnership among three U.N. agencies—the World Bank, the United Nations Development Program (UNDP), and the United Nations Environment Program (UNEP). This partnership came into existence in 1991 and was restructured in 1994. It is not an independent legal entity, yet it enjoys a very sophisticated organizational structure and dedicated staff. It effectively mobilizes valuable resources from the three agencies and their membership, and it allocates these resources according to the most critical priorities. The legal framework of the GEF, which deserves the careful attention of anyone interested in institution building and international law, is substantially the brainchild of Ibrahim Shihata.

In 1991, when the world community asked the World Bank Group, through the Development Committee (of the Board of Governors of the IMF and the World Bank), to prepare a "legal framework" to promote foreign direct investment, it was Ibrahim Shihata who was asked to chair a task force entrusted with the project. This task force included the General Counsel for the World Bank (IBRD and IDA), IFC, and MIGA. It was my privilege to be the representative of the IFC in the working group and, for the first time, to observe and interact with Ibrahim Shihata's sharp mind, broad knowledge, and creativity.

From the beginning, he had a clear idea about what was and was not achievable in narrowing the gap between industrialized and developing countries on the rules that should govern foreign direct investment and the difficulties the U.N. Center on Transnational Corporations had been struggling with since 1977 in bridging that gap. The final product, the "Guideline on the Treatment of Foreign Direct Investment" was presented to the Development Committee in the fall of 1992. The Guidelines were not binding, since the World Bank Group could not issue binding rules that would govern the conduct of its member countries; however, they embodied both essential legal principles and commendable practices that would promote foreign direct investment. Thanks to the superb negotiating skills, the persuasive arguments, and engaging personality of Ibrahim Shihata, the

2. IBRAHIM F.I. SHIHATA, *MIGA AND FOREIGN INVESTMENT: ORIGINS, OPERATIONS, POLICIES, AND BASIC DOCUMENTS OF THE MULTILATERAL INVESTMENT GUARANTEE AGENCY* (1988).

Guidelines gained the approval of the representatives of both industrialized and developing countries within the Bretton Woods institutions.

The legal framework of the World Bank Inspection Panel is also part of Dr. Shihata's legacy in institution building. His book,³ first published in 1994 and revised in 2000, is the ultimate reference about the World Bank Inspection Panel.

Dr. Shihata's contributions to international law, institution building, and development inside and outside the World Bank Group are far too many to list here. His innovative approaches to problems of governance, rule of law, civil society, environmental and gender dimensions to development, and many more are a testimony to his unique ability to adapt a legal text to the changes that are manifestations of life without deviating from basic principles of interpretation or compromising the fundamental objectives of the text. He was an innovator, yet one who respected and strengthened existing institutions. He left a legacy of institutional philosophy that will benefit generations of those who will be working in development.

Ibrahim Shihata was an outstanding General Counsel of the World Bank. His advice was sought and heeded by everyone from Executive Directors to senior management to staff in various positions. Of his presence in the boardroom, Sven Sandstrom, a Managing Director at the World Bank, said “. . . respect was most apparent when Ibrahim would speak in the boardroom, which, as we all know too well, is a room full of people who are not easily impressed. Only Ibrahim could command complete silence and attention when he spoke.”⁴ Hardly any serious aspect of Bank operations did not land on his desk or benefit from his attention. Those who had the privilege of working with him could not fail to appreciate not only his intellectual ability in dealing with difficult issues but also his concern for the useful application of ideas. He was a dreamer but his dreams always turned to improving reality.

Honesty, independence, integrity, and courage were some of Ibrahim Shihata's many qualities. He reached the pinnacle of his profession without compromising principle. He spoke his mind without fear or favor and was always respected even by those who saw things differently. He was champion of the poor and was rightly perceived as a supporter of Part II countries, especially when they were at a disadvantage. In this respect, he played a crucial role at the World Bank in promoting a balance between industrialized nations and developing countries both at the level of policy making and policy application.

Ibrahim Shihata carried a burden few could have carried, especially when one takes into consideration his care for detail and the excellence of his intervention. His enormous contributions transformed the World Bank during the terms of four presidents. These contributions are recorded in his multi-volume work *The World Bank in a Changing World*.⁵ For those who knew him and those who work in the field of law and development, Ibrahim Shihata's written works will remain much-sought references and his memory will not be dimmed.

3. IBRAHIM F.I. SHIHATA, *THE WORLD BANK INSPECTION PANEL* (1994).

4. Sven Sandstrom, from a speech delivered on the occasion of the *Liber Amicorum* ceremony honoring Ibrahim Shihata held at the World Bank on April 9, 2001.

5. IBRAHIM F.I. SHIHATA, *THE WORLD BANK IN A CHANGING WORLD*, vols. 1-3 (1991-2000).

