



CENTER FOR INTERNATIONAL ENVIRONMENTAL LAW

13<sup>TH</sup> INTERNATIONAL ANTI-CORRUPTION CONFERENCE  
ATHENS, GREECE  
30 OCTOBER – 2 NOVEMBER

**WORKSHOP 4.6:**  
***SHEDDING LIGHT ONTO INVESTMENT ARBITRATION***  
**November 1, 2008 11.00AM – 1.00PM**

**Moderator:** *Sofia Plagakis, CIEL*

**Panelists:** *Nathalie Bernasconi-Osterwalder, Managing Attorney, Geneva, CIEL*  
*Lucinda Low, Partner, Steptoe & Johnson LLP*  
*Jacob Werksman, Program Director, Institutions and Governance*  
*Program, World Resources Institute*

*Shedding Light onto Investment Arbitration: An Introduction*  
*Introductory Remarks by Sofia Plagakis, CIEL*

**I. Introduction of CIEL**

The Center for International Environmental Law (CIEL) would like to welcome you today to our workshop entitled *Shedding light on international investment arbitration*. Let me first tell you a little bit about our organization. CIEL is a public interest law firm, founded almost 20 years ago. Our mission is to use international law, institutions, and processes to protect the environment, human health and human rights, seeking to create a more just and sustainable world. CIEL plays a key leadership role in establishing a firm foundation of legal analysis to strengthen progressive efforts by civil society. We provide a wide range of services to clients and partners, including legal counsel, analysis, policy research, advocacy, education, training, and capacity building. CIEL works very effectively at the global, regional, national and community levels with individuals and communities, nongovernmental organizations, intergovernmental organizations, and national governments.

**II. CIEL's Project on Democratizing International Dispute Settlement (DIDS)**

About three years ago, CIEL embarked on a project to reform international dispute settlement processes with the aim to making these more transparent and, to some extent, participatory. Over the many years of working on public international law, we realized increasingly that international dispute settlement has a serious democracy deficit with respect to transparency and accountability despite the fact that these processes often involve profoundly important issues of public policy and international law.

International dispute settlement mechanisms vary in their provenance, mandate, operation, resources, independence and effectiveness, but they are an essential component of the international legal system -- just as domestic dispute settlement mechanisms are essential to implementing and enforcing national law. International dispute settlement mechanisms thus are of fundamental importance to solving the critical issues addressed by the international legal system, including trade, investment, human health, the environment, and human rights, among a host of other issues.

Our project seeks to reduce and eventually eliminate the democracy deficit in international dispute settlement. To achieve this, we are using a variety of methodologies, ranging from revising procedural rules, influencing practice on a case by case basis, conducting comparative studies and best practices, working with different governments, and so on. Much of our focus is currently on international *economic* dispute settlement, including under the World Trade Organization (WTO) and under regional and bilateral trade and investment agreements. Compared to other dispute settlement processes, economic dispute settlement is particularly secretive, though tremendous progress has been made at the WTO over the past few years. In the area of investment, some progress has been made as well, but investment arbitration clearly remains the least transparent and accountable. Given that bribery is a widespread phenomenon in transnational investment, we think that the need for transparency in investment disputes is particularly urgent. And this will be the focus of our discussion today.

### **III. Introductions of Panelists and Topics**

I would like to introduce our panelists:

1. Nathalie Bernasconi-Osterwalder, who is managing attorney of CIEL's Geneva office and attorney in CIEL's Trade and Sustainable Development Program, will provide a brief background of investment arbitration, and provide the linkages investment arbitration and the lack of transparency.
2. Lucinda Low, partner in the Washington office of Steptoe & Johnson LLP, where she is a member of the International Department, heads the firm's Foreign Corrupt Practices Act practice, and serves on the firm's Executive Committee, will build on Nathalie's presentation, focusing on both the substantive and procedural aspects of corruption-related cases, highlighting the complexities.
3. Jacob Werksman, program director of the Institutions and Governance Program of the World Resources Institute, will make the linkages between climate change, investment and corruption by discussing the Executive Board of the Kyoto Protocol's Clean Development Mechanism, focusing on its role in carbon-related investments.