



The Proposed OIC Investment Dispute Settlement Mechanism

A South-South Contribution to ISDS Reform

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Three (3) talking points

1. Demystifying the OIC Investment Treaty!
2. What are the concerns of the developing south about current ISDS systems?
3. How is the ongoing reform of the OIC investment dispute settlement system trying to address these concerns?

Seven (7) facts about the treaty

1. **Adopted** in 1981
2. **Entered into force** in 1988
3. **Signed** by 36 Member States
4. **Ratified** by 29 Member States
5. **Refers to ISDS for dispute settlement (art.17)**, “until a permanent organ is established”;
6. **First ISDS case under Art.17: *Al-Warraq vs. Indonesia*, 2012;**
7. **Multiplication of cases since 2012: 6 to 8 new cases since 2012**

Three (3) OIC policy decisions about need to reform Article 17

1. Policy recommendation during OIC-IPA Forum in 2016 in Riyadh
2. CFM Resolution No. E-43/E (Tashkent, 2016)
3. CFM Economic Resolution (Abu Dhabi, 2019)

Ten (10) key concerns of the developing south

Sovereignty

- Regulatory chill and constraints on right to regulate
- Impact on development of domestic judicial institutions and domestic rule of law

Legitimacy

- Independence and impartiality
- Inconsistency
- Lack of appellate mechanism
- Frivolous claims
- Third-party funding
- Impacts on non-parties to the dispute

Capacity

- Costs of Arbitration
- Capacity to handle sophisticated claims

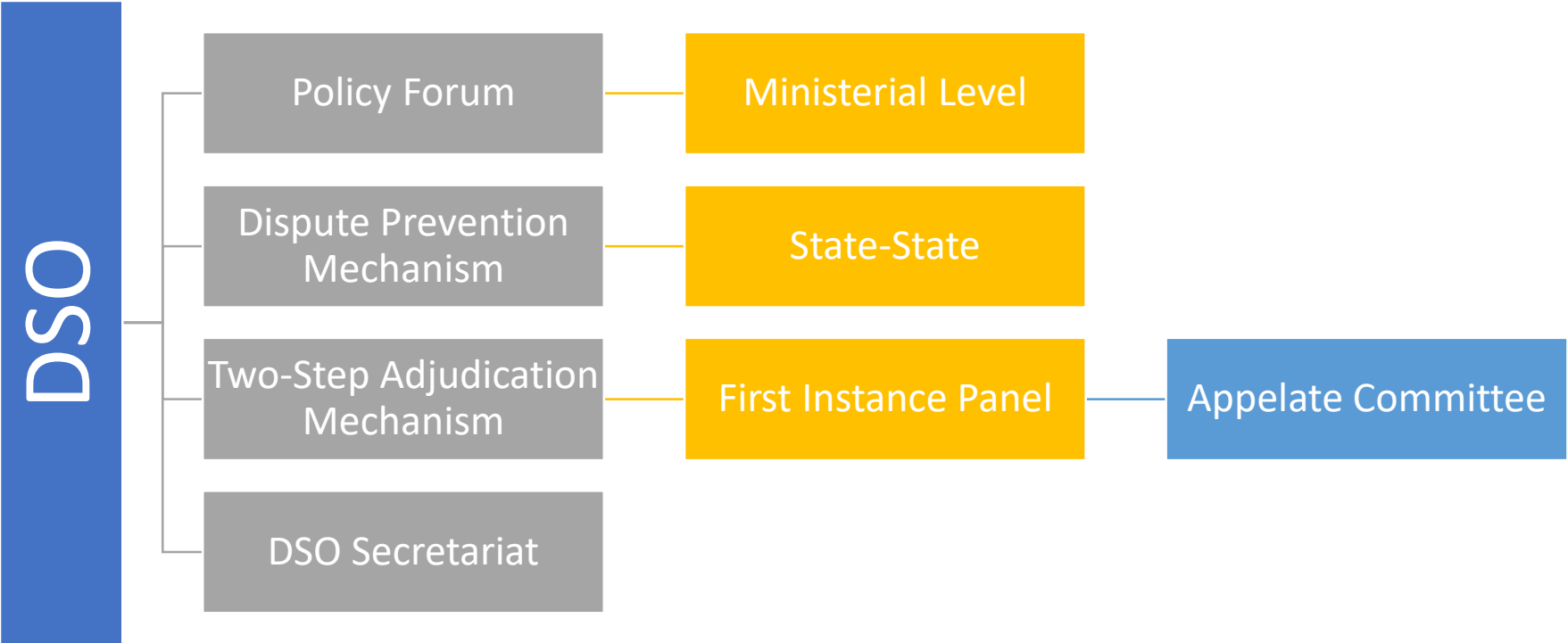
Responses to sovereignty, legitimacy and capacity concerns in the OIC system

1. Design principles
2. Dispute Settlement Architecture
3. Investor-State Dispute Settlement Mechanism
4. State-State Dispute Settlement Mechanism
5. Legal Assistance Facility (LAF)
6. Other concerns (third-party funding and frivolous claims)

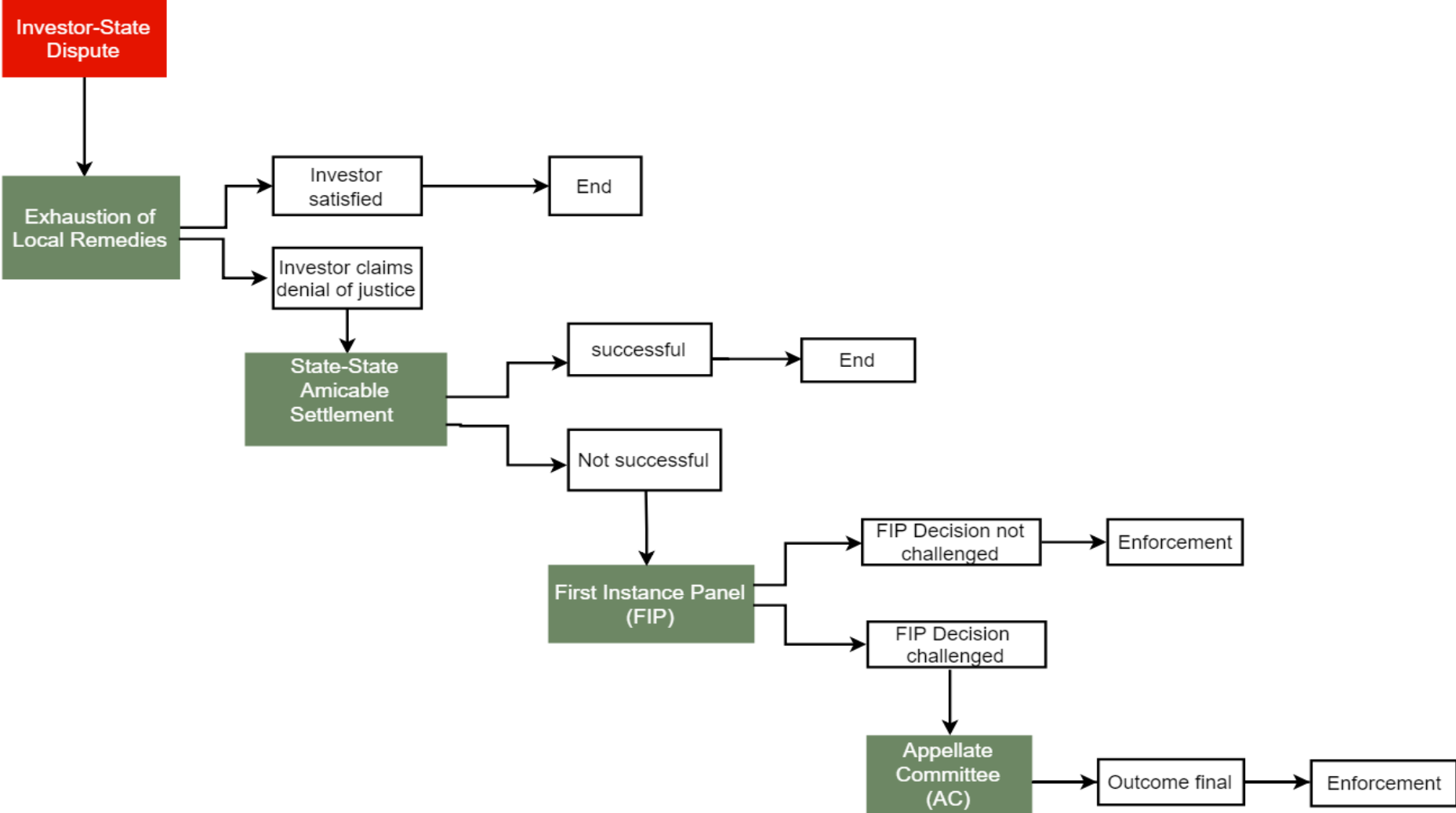
(1) Design principles

1. Limiting access to ISDS
2. Institutionalizing Dispute Prevention
3. Designing the system in line with the following key principles
 - Subsidiarity
 - Transparency
 - Participation (third parties???)
 - Accountability

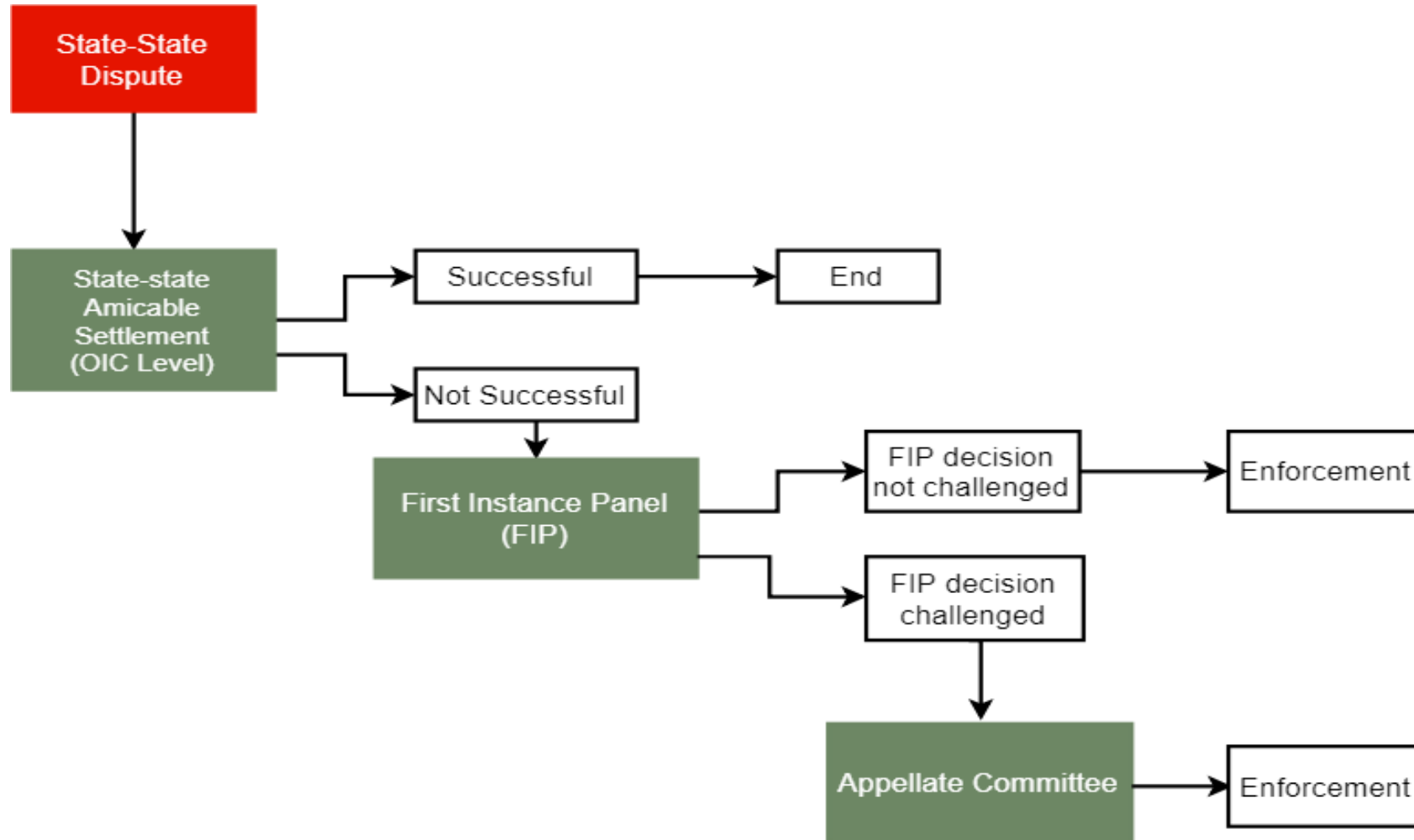
(2) Dispute Settlement Architecture



(3) Investor-state dispute settlement mechanism



(4) State-state dispute settlement mechanism



(5) Legal Assistance Facility

1. Proposal for an independent organ to be established within one of the OIC economic organizations;
2. Mandate will be to provide legal assistance to Member States to respond to disputes. Mandate may also extend to providing capacity building;
3. LAF shall report annually to the Policy Forum

(6) Third-Party Funding and Frivolous Claims

1. Matters not be regulated in the Investment Dispute Settlement Protocol;
2. Matters to be addressed in the Rules and Regulations of the Dispute Settlement Organ;
3. Will take benefit of outcome of ongoing discussions at UNCITRAL

Summary of reform proposals

Concerns about ISDS	OIC Reform Proposals
Sovereignty	<ul style="list-style-type: none">• Establishment of the Policy Forum which shall have mandate to interpret substantive provisions of the OIC treaty and thereby prevent regulatory chill• Introduction of the requirement to exhaust local remedies, thereby reinforcing domestic judicial institutions and domestic rule of law
Legitimacy	<ul style="list-style-type: none">• Establishment of a permanent dispute settlement mechanism to address consistency, independence and impartiality issues• Introduction of an appeal mechanism• ISDS limited to denial of justice claims• State-state dispute settlement introduced as a filter before 2-step adjudication mechanism• Introduction of a right of participation of third parties interested in disputes• Regulation of TPF and introduction of mechanisms to prevent frivolous claims
Capacity	<ul style="list-style-type: none">• Establishment of an advisory center to assist Member States in facing investment disputes

THANK YOU