



COMPLAINTS TRAINING WORKSHOP

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Choice of Forum

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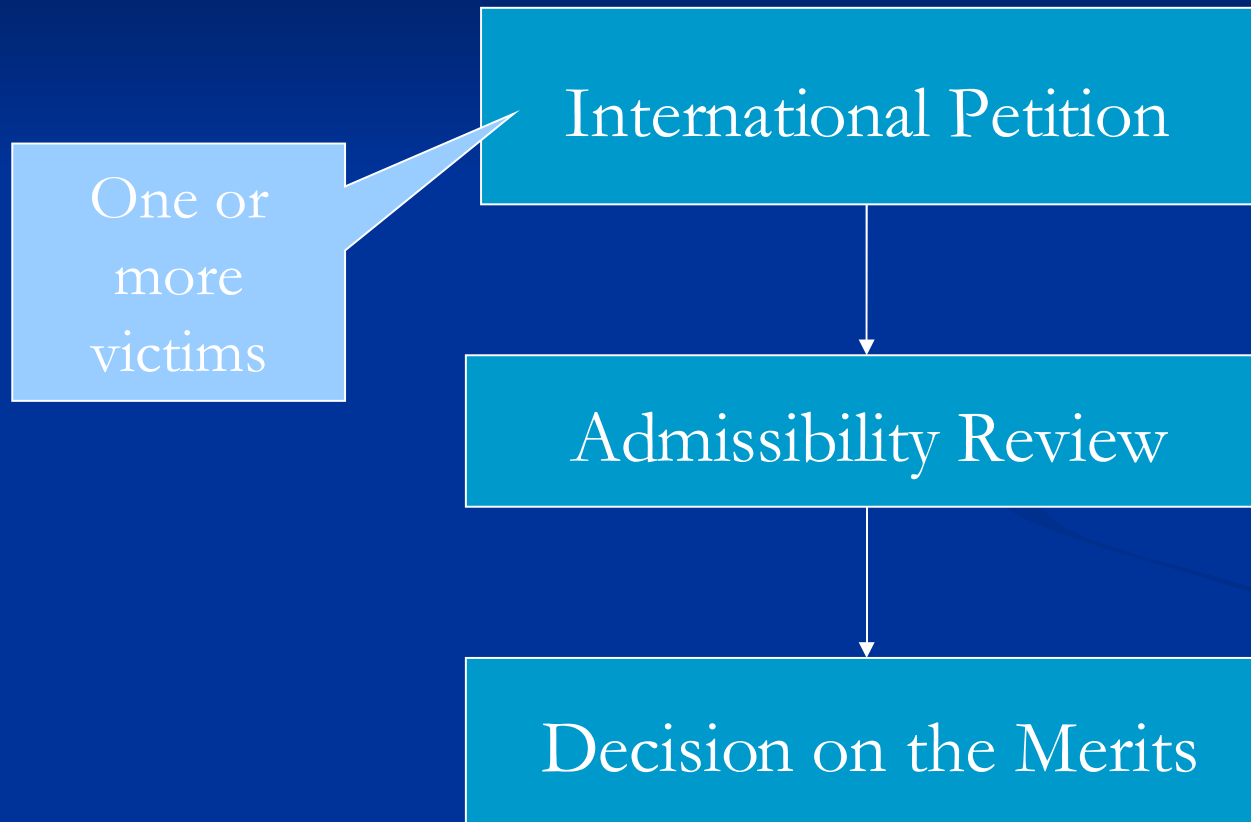
What is Forum Choice?

- Selection amongst alternative procedures
- Precondition: Several possible remedies and parallel or corresponding rights in several treaties
- Concerns parallel and successive international procedures, possibly also domestic ones

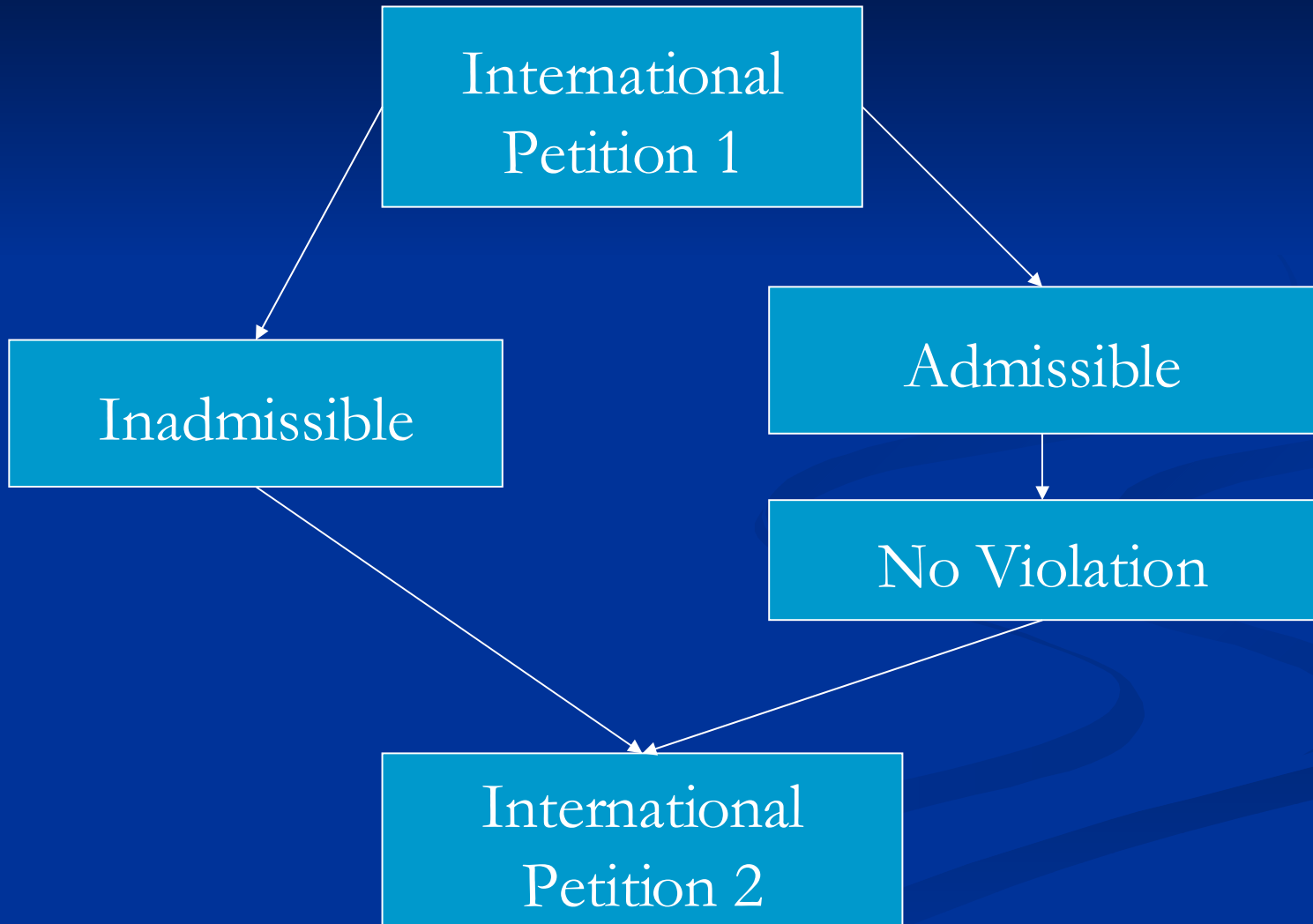
What Choices?

- Exclusive litigation strategy
- Alternative strategies
 - successive litigation
 - parallel litigation
 - “split” litigation

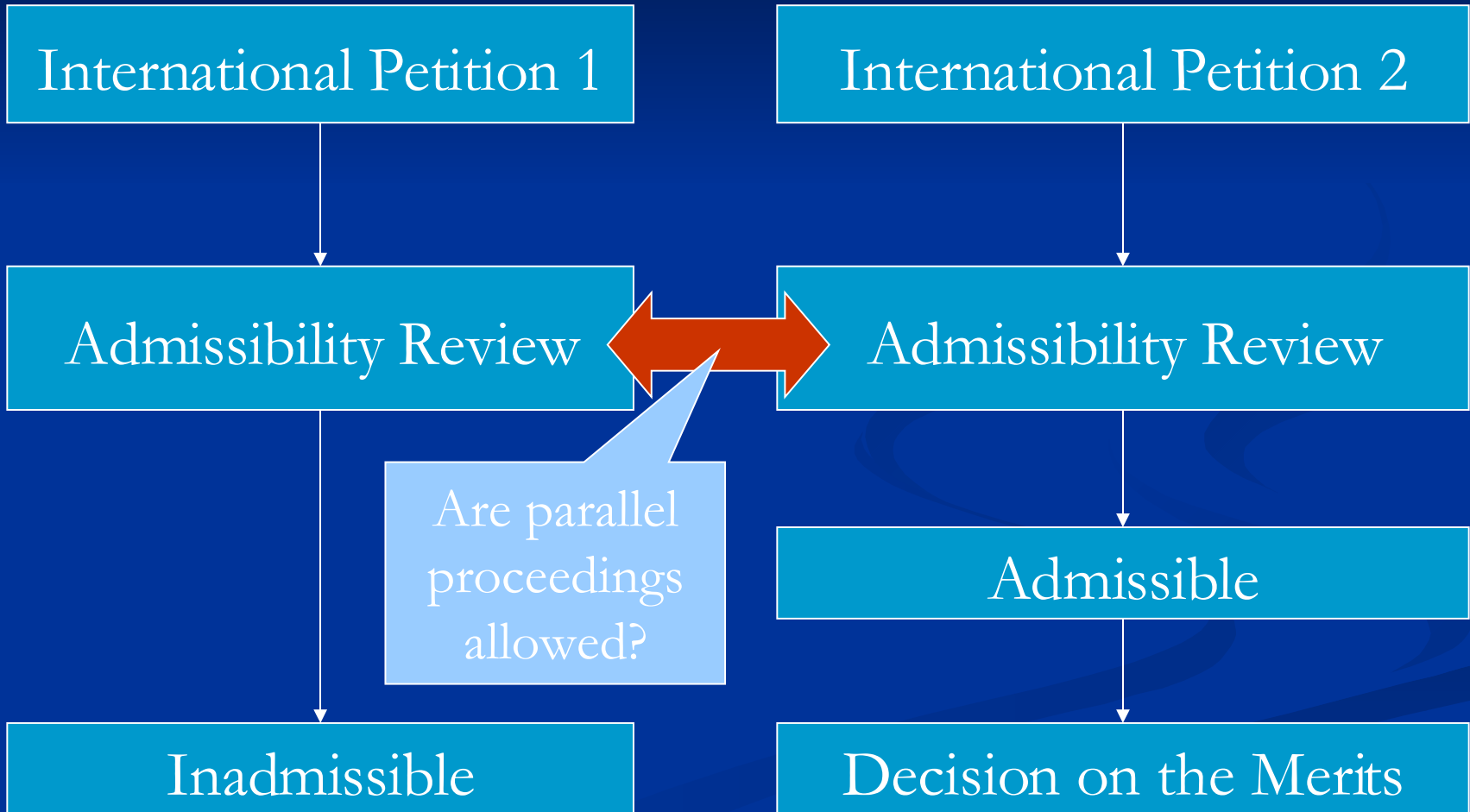
Exclusive Litigation



Successive Litigation



Parallel Litigation

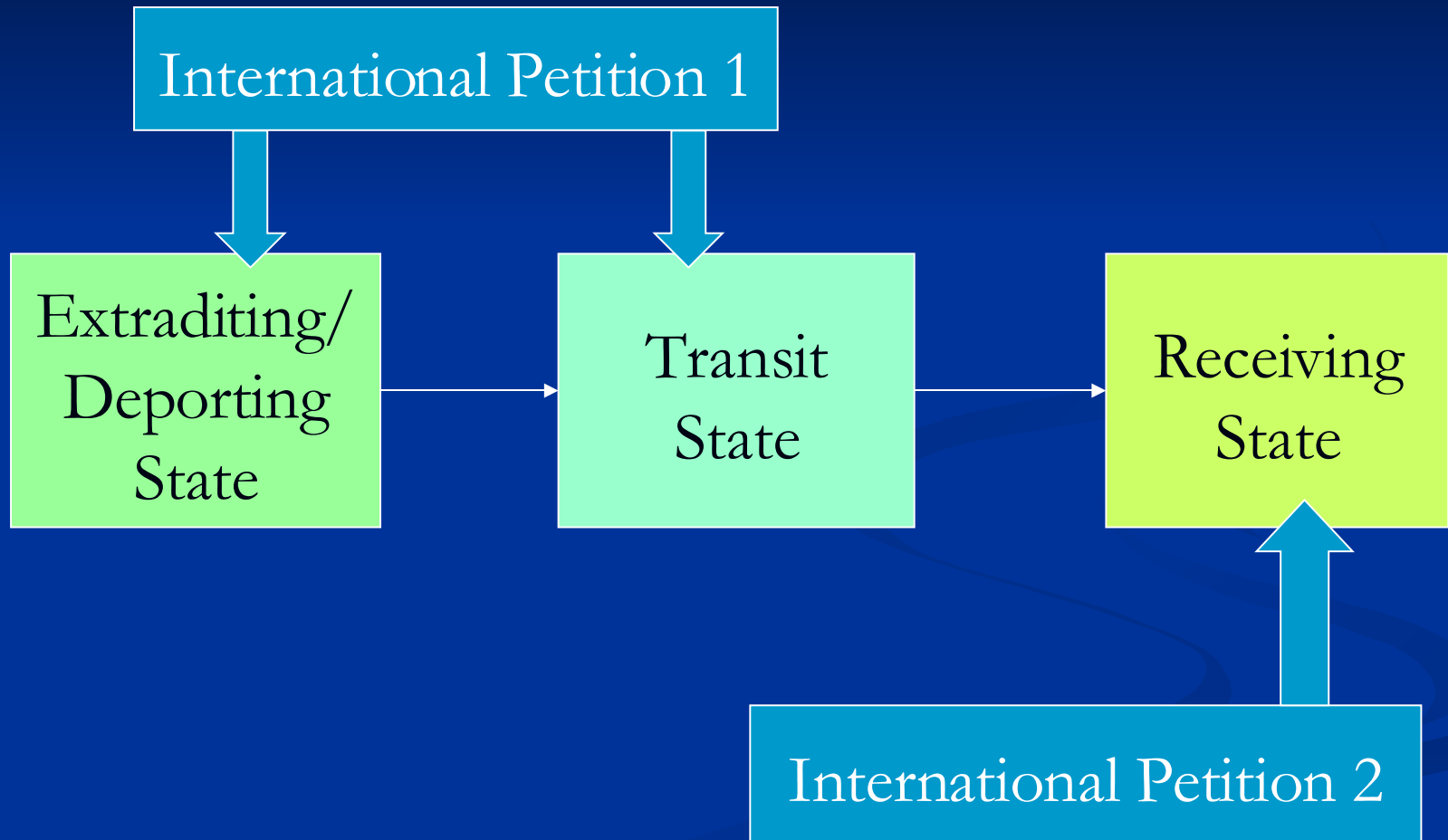


„Split“ Litigation I

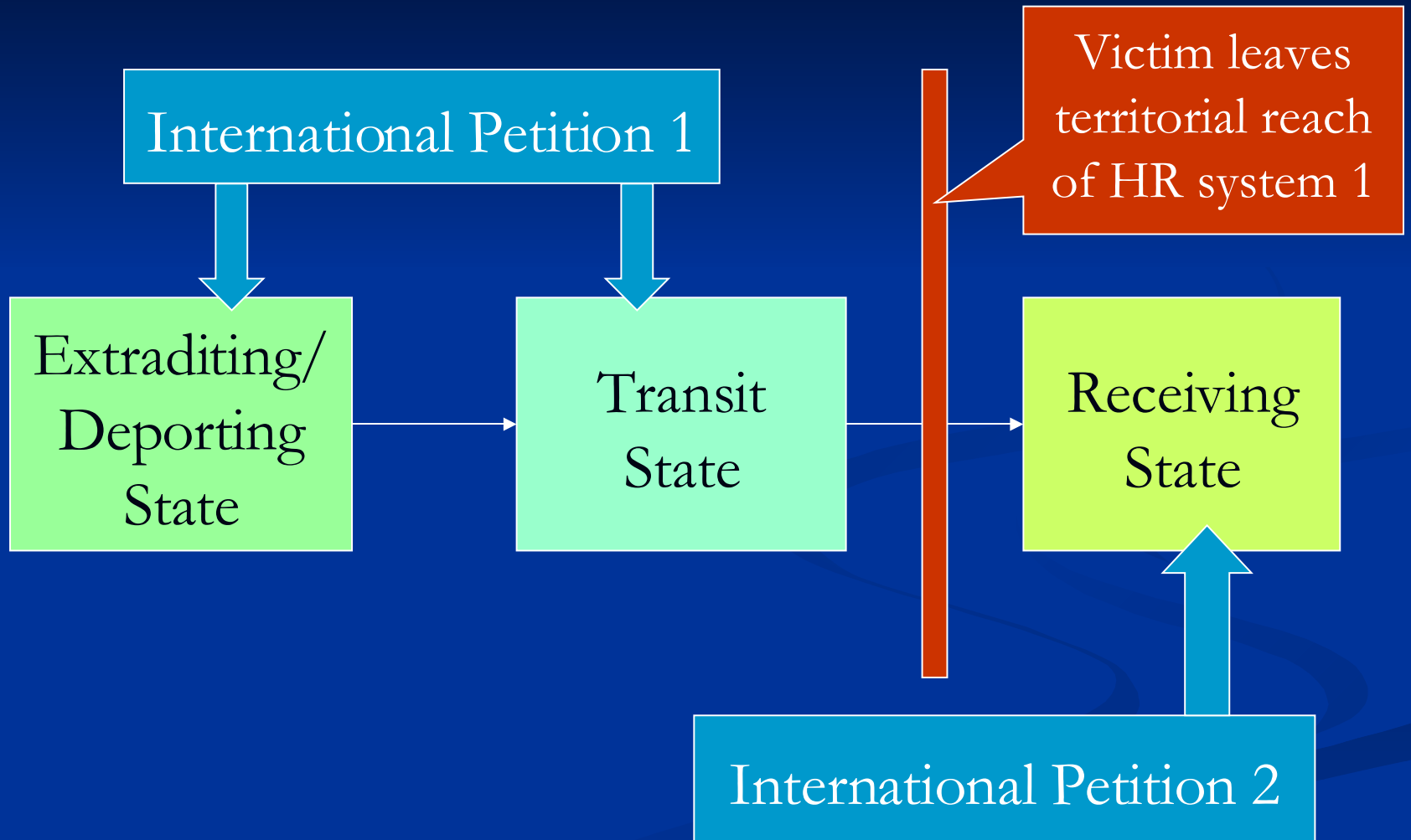
Scenario

- Victim is at risk of being returned from Sending State via Transit State to Receiving State
- Faces threat of torture in Receiving State
- Remedies in Sending State exhausted

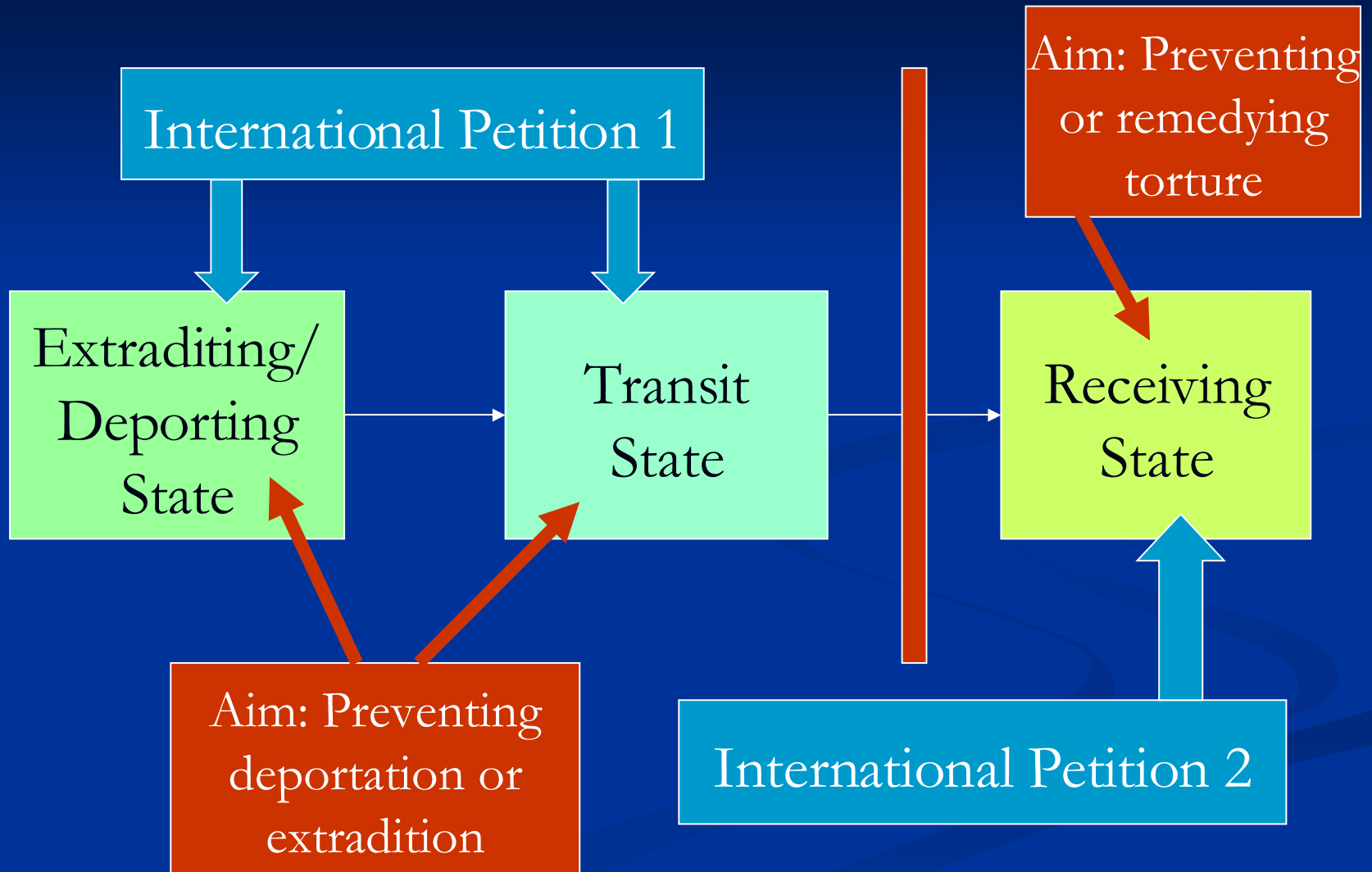
„Split“ Litigation I



„Split“ Litigation I



„Split“ Litigation I

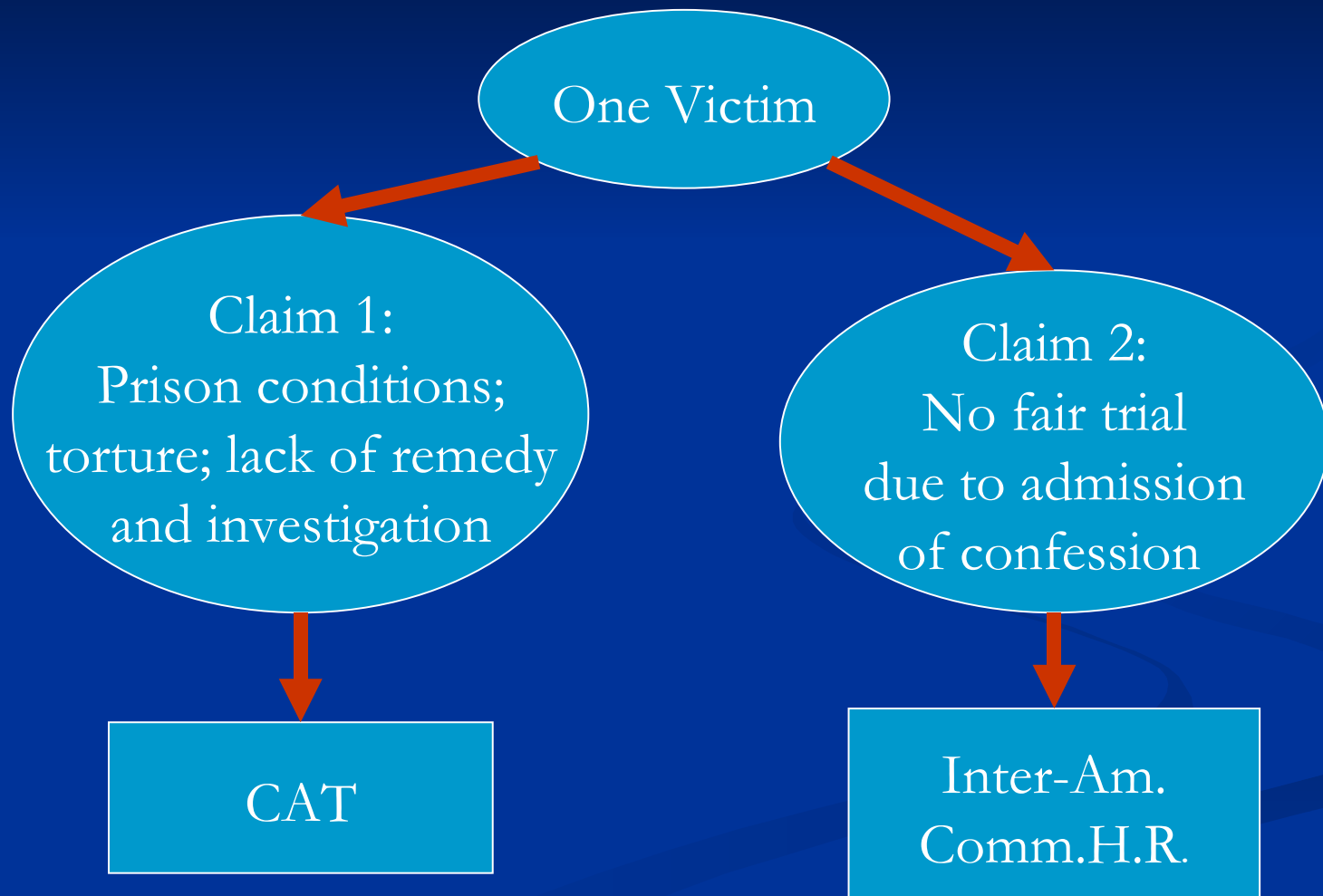


„Split“ Litigation II

Scenario

- Victim is subjected to inhuman prison conditions and is being tortured during interrogation
- Victim's confession is admitted at trial despite claim of torture and without investigation of her claim
- Domestic remedies are exhausted
- State concerned has ratified Inter-American Convention on Human Rights and CAT

„Split“ Litigation II



Factors Determining Forum Choices

Formal Preconditions not Subject to Choice

Jurisdiction (treaty ratification and acceptance of procedures, date of entry into force)

Deadlines (e.g. six months - ECHR)

Substance and scope of rights (except in case of “expansion through litigation” strategy)

Factors Determining Forum Choices

Rights-Related

Covered right (precision vs. generality)

Substance of case law

Volume of case law (legal certainty)

Factors Determining Forum Choices

Procedure-Related

- Requirements of form
- Admissibility criteria
- Requirements of evidence
- Option of an oral hearing

Factors Determining Forum Choices

Outcome-Related

- Legal value of result (binding effect)
- Awards of compensation, including punitive damages
- Success rate (overall and case-specific, real or perceived)
- Enforceability and state compliance

Factors Determining Forum Choices

Factual Circumstances (Examples)

- Availability of sources (primary and secondary)
- Accessibility of the international procedure (and the petitions team)

Factors Determining Forum Choices

Strategy and Expectations

- Client's preferences (if applicable)
- Sponsor's preferences (if applicable)
- Part of a larger litigation strategy?
- Side effects of litigation (publicity etc.)

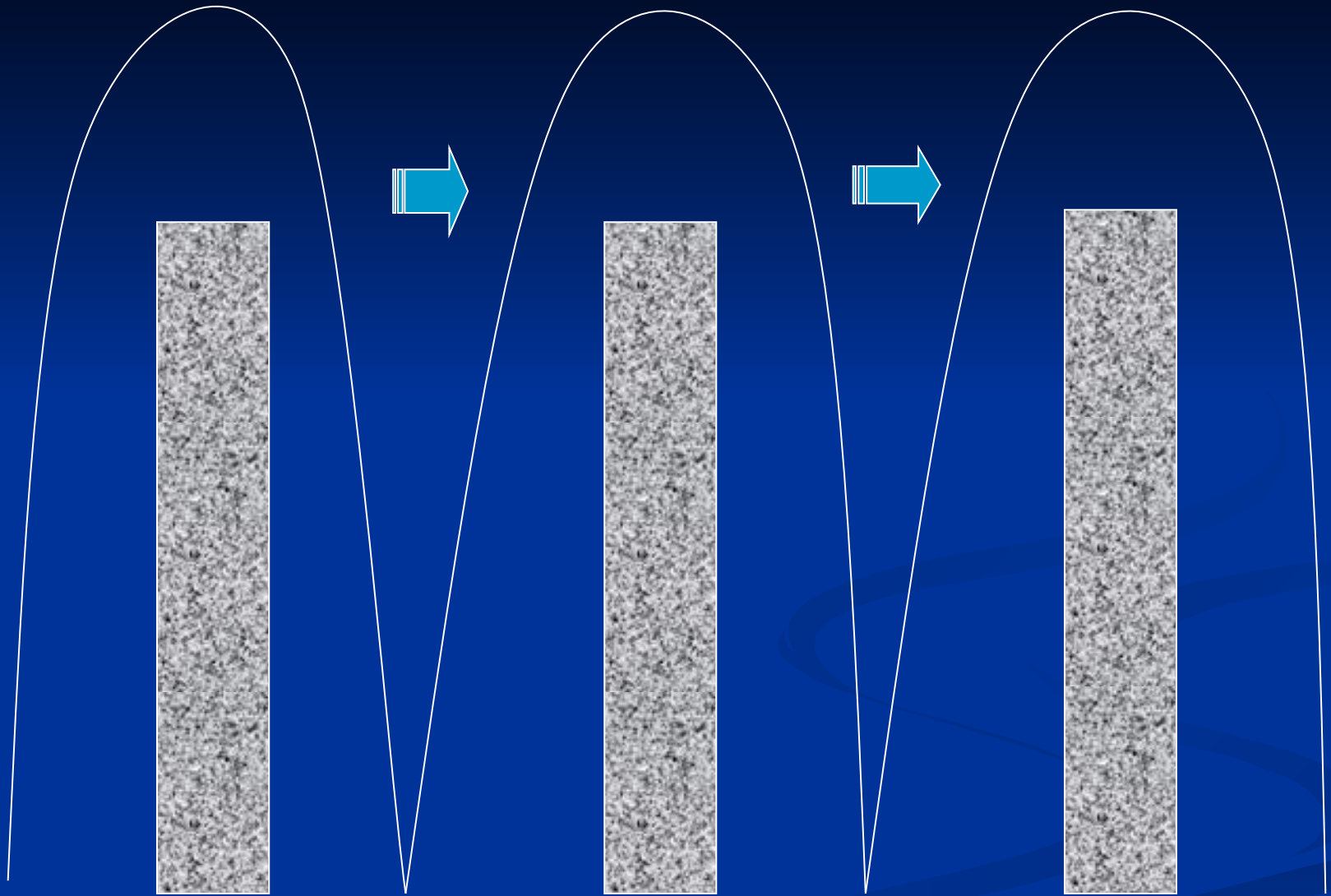
Factors Determining Forum Choices

External/Cultural Factors

- Knowledge/outreach
- Cultural/legal tradition
- Prior exposure and respect for procedure
- Compatibility of domestic and international procedure

What precludes forum shopping?

- The treaties
(CCPR OP 1, art. 5 (2) (a); CAT, art. 22 (5) (1), etc.)
- Reservations
- Practice



Treaties

Reservations

Practice

The Treaties

The Committee shall not consider any communication from an individual unless it has ascertained that ... [t]he same matter is not being examined under another procedure of international investigation or settlement. (CCPR OP 1, art. 5 (2) (a))

The Committee shall not consider any communication from an individual under this article unless it has ascertained that ... [t]he same matter has not been, and is not being examined under another procedure of international investigation or settlement. (CAT, art. 22 (5) (1))

The Reservations

- Aim at further restricting forum choices with respect to certain European states.
- Prohibit “successive” in addition to “parallel” complaints to regional and UN bodies.
- Have been accepted by the Human Rights Committee.

The Practice

- Interprets the treaty provisions and determines options for future applicants.
- Clarifies matters only partly.
- Is still developing.

What is „substantially the same“ petition?

- Victims
- Respondent states
- Facts
- Rights
- Complaints

What is „substantially the same“ petition?

- Submission?
- Consideration?
- Decision on the Merits?

Creative Litigation Strategies Using Forum Choice

Examples

Litigation Crossing Human Rights Borders – A Case of Past Torture Case Scenario

- Victim was tortured in Country of Origin
- Fled to Country of Residence via Transit Country
- Country of Origin has accepted CAT procedure
- No domestic remedies against torture or to provide redress for torture victims available in Country of Origin
- Country of Residence has ratified European Convention on Human Rights and CCPR

Litigation Crossing Human Rights Borders – A Case of Past Torture

