The Limits of Institutional Discretion in Multiparty Tribunal Constitution

Part I: Critical assessment of the Cairo Regional Centre's Rules and Practice

Dr Karim Hafez[1]

Table of Contents

I. Structure, breakdown, and response 1
II. Tribunal constitution under the 2011 Cairo Rules: 2
A. The Centre's practice under the 2011 Cairo Rules 4
B. Three Preliminary observations 5
C. Textual critique of the Centre's Practice 6
D. Epistemic critique of the Centre's practice 7
E. Normative critique of the Centre's practice 10
III. Tribunal constitution under the 2024 Cairo Rules 12
A. The amended Article 11 and its putative effect 12
B. The actual effect of the amended Article 11 14
1. Collapse of morphological taxonomy 14
2. Recoding of institutional authority under Article 11 15
3. The limited purchase of cross-reference to Articles 10(2) and 10(4) 17
IV. Conclusions and implications 20

I. Structure, breakdown, and response

This is Part I of a two-part paper examining the Cairo Regional Centre for International Commercial Arbitration's approach to tribunal constitution in arbitrations involving multiple claimants or multiple respondents. The two parts pursue a single project but sound in different registers.

Part I is critical and retrospective. It analyses the Centre's treatment of multiparty appointment breakdowns as that practice has developed under the 2011 Rules and as it has ostensibly been formalised in the 2024 revision. The analysis proceeds on three independent planes: textual coherence, epistemic soundness, and normative justification. Each is developed on its own terms. Taken together, they show that the Centre's approach cannot be sustained within the structure of the Rules. The gravamen

1 The author served on the Advisory Committee of the Cairo Centre, and his tenure overlapped with some of the practices examined in this paper. He was not directly involved in the revision of the 2024 edition of the Centre's Arbitration Rules.

of the critique is that the practice was misconceived at source, and that the amendments to the 2024 rulebook—whatever their intended objective—have neither codified that practice nor left it untouched; instead, they have re-encoded the entire logic of institutional default intervention in multiparty tribunal constitution in ways that the Cairo Centre has yet to acknowledge.

The implications of that conclusion are potentially far-reaching. If correct, the resulting exposure may extend across a substantial body of awards—an exposure difficult to quantify but plainly neither theoretical nor trivial. Defects in tribunal constitution go to the core of party consent and institutional legitimacy and are treated as dispositive at the stages of annulment and enforcement. For that reason, the analysis required to establish the critique of the Centre's application of its Rules is necessarily detailed and unavoidably long. Part I confines itself to that task.

Part II is remedial and prospective. It addresses the question of what is to be done once the deficiencies identified in Part I are brought into view. It evaluates the available options by reference to what each secures, what it risks, and what it demands of the institution, assessed against considerations of coherence, friction, capacity, signalling, and systemic stability.

Finally, a word about the reach of the analysis. Although this intervention focuses on the rules and practice of a particular institution, the analysis engages questions of broader significance. The experience of the Cairo Centre functions not as an object of parochial critique, but as an instructive lens through which to examine problems of agency, control, and rule design in institutional arbitration. A recurring leitmotif throughout is the tension between formalised structures of authority and the discretionary practices through which institutions operationalise them.

II. Tribunal constitution under the 2011 Cairo Rules:

The discussion begins not with the current 2024 edition of the Cairo Rules but with its 2011 predecessor, the first to address tribunal constitution in cases involving party multiplicity. It does so because the interpretive and institutional questions examined in this paper are historically conditioned. The Centre's administrative practice concerning multiparty appointment breakdowns was articulated, and then normalised, under the 2011 text; the 2024 revision is intelligible only against that inherited baseline. Starting with the legacy rulebook therefore is not an antiquarian choice, but a methodological necessity: it permits the practice to be assessed at its point of origin, and it supplies the comparator against which the 2024 amendments may be evaluated for continuity, correction, or structural displacement.

The controlling provision on multiparty tribunal constitution under the 2011 edition of the Cairo Rules is Article 10, which provides:

> 1. For the purposes of article 9, paragraph 1, where three arbitrators are to be appointed and there are multiple parties as claimant or as respondent, unless the parties have agreed to another method of appointment of arbitrators, the multiple parties jointly, whether as claimant or as respondent, shall appoint an arbitrator.

> 2. If the parties have agreed that the arbitral tribunal is to be composed of a number of arbitrators other than one or three, the arbitrators shall be appointed according to the method agreed upon by the parties.
>
> 3. In the event of any failure to constitute the arbitral tribunal under this article, the Centre shall, at the request of any party, constitute the arbitral tribunal, and in doing so, may revoke any appointment already made, and appoint or reappoint each of the arbitrators and designate one of them as the presiding arbitrator."

With two exceptions, both irrelevant for present purposes, this provision reproduces Article 10 of the UNCITRAL Arbitration Rules (2010), upon which the Cairo Rules were modelled.[2]

The logic of tribunal constitution under Article 10 is straightforward. Where a three-member tribunal is required and there are multiple claimants or multiple respondents, the parties on each side must make a single joint nomination. Their failure to do so is characterised as an inability to constitute the arbitral tribunal, which, upon application, triggers the Centre's plenary powers to constitute the tribunal in its entirety. The framework relies upon a single, general fail-safe mechanism rather than differentiated or staged default responses.

The breadth of the institution's powers under this model is deliberate. Article 10(3) is framed in expansive terms to accommodate the wide and variable configurations in which failure of tribunal constitution may arise in multiparty proceedings. The authority conferred upon the institution is correspondingly extensive, encompassing revocation, appointment, reappointment of arbitrators, and designation of the presiding arbitrator.

The resulting flexibility reflects two interlocking concerns: first, the limitless factual permutations that arbitral proceedings may present; secondly, the normative imperative of ensuring equal treatment of the parties. Rather than introduce a rigid, highly prescriptive mechanism that may prove ill-suited to the contingencies of arbitral practice, Article 10 favours a discretionary, contextual model of institutional intervention.

None of this should be controversial and, in any event, is confirmed in the *UNCITRAL Recommendations to assist arbitral institutions and other interested bodies with regard to arbitration under the UNCITRAL Arbitration Rules (as revised in 2010)*, which in turn draws liberally from the *travaux* on Article 10 of the UNCITRAL Rules.[3]

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[2] The first exception is formal: the UNCITRAL "appointing authority" is replaced by "the Centre" as the body exercising default appointment powers under Article 10(3). The second lies in the chapeau of Article 10(3). Under the UNCITRAL Rules, institutional intervention is triggered by any failure "to constitute the arbitral tribunal under *these Rules*"; under the Cairo Rules, the trigger is failure "to constitute the arbitral tribunal under *this article*." The Cairo formulation's narrowing of the trigger for plenary intervention comes at the cost of flexibility (it excludes failure caused by defects arising outside Article 10 or at its interface with other appointment provisions under the Rules) without a clear corresponding benefit.

[3] Report of the United Nations Commission on International Trade Law, Forty-fifth session (25 June–6 July 2012), General Assembly, Official Records, Sixty-seventh session, Supplement No. 17, Annex I, UN Doc. A/67/17, p. 78. For the drafting history of Article 10, see paragraphs 86–93 of the Report of

The multiparty appointment regime embodied in Article 10 reflects a deliberate set of policy trade-offs. At the level of allocation and scope of authority, the system is simple and predictable. Parties are on notice that, absent a joint nomination, the appointing authority will, upon request, exercise plenary powers to constitute the tribunal in full. Because the Rules establish no tiers of default or partial remedial measures, disputes as to which power is engaged, or where it resides, are foreclosed. The result is reduced procedural friction and limited scope for institutional improvisation. Equality is preserved through a conscious reallocation of decisional authority. Where joint appointment fails, the Rules do not defer to prior autonomous action; autonomy is suspended altogether—retrospectively. Once one side, acting collectively, is unable to exercise its appointment privilege, allowing the other side, acting unilaterally, to enjoy that privilege would risk structural inequality. The policy choice is clear: in situations of irresolvable multiparty deadlock, neutrality secured through plenary institutional takeover of tribunal constitution is less harmful than complete suppression of autonomous action.

Parties are free to reject these trade-offs by agreeing upon "another method of appointment of arbitrators," whether before or after the commencement of proceedings. Absent such agreement, however, the Rules supply a determinate institutional default.

The drawbacks of this model are the mirror image of its benefits. First, the mechanism is blunt. Once the appointing authority assumes responsibility under Article 10(3), the parties relinquish all influence over the composition of the tribunal. The bargain entails a conscious surrender of control in exchange for certainty and formal equality.

Secondly, the model is unpredictable as far as concerns the *exercise* of the institutional plenary discretion. The Rules offer no guidance as to whether formal or functional equality should prevail; whether the seat of arbitration or likely place of enforcement should bear upon the assessment; or whether, and to what extent, evidence of strategic party conduct should influence the institution's exercise of its plenary prerogatives. These questions are all left entirely to institutional judgment, with all the attendant benefits and risks that such discretion entails.

A. The Centre's practice under the 2011 Cairo Rules

Three years into administering the 2011 Rules, the Cairo Centre issued a set of formal Practice Notes explaining how it proposed to apply certain of its provisions.[4] In relation to multiparty tribunal constitution, the Notes identify three scenarios arising from the joint appointment requirement in Article 10(1) (focusing primarily on the common case of multiple respondents): cases in which no respondent makes any

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the Working Group on Arbitration and Conciliation on the work of its forty-sixth session (New York, 5–9 February 2007), UN Doc. A/CN.9/619 (20 March 2007).

[4] Practice Notes Regarding the Centre's Decisions under the Arbitration Rules in force since 1 March 2011 (April 2014) at https://crcica.org/wp-content/uploads/2022/08/ArbitrationPractice-2014-eng.pdf.

appointment; cases in which multiple respondents make competing appointments; and cases in which some respondents appoint while others do not participate.

The Notes state that where multiple respondents make no appointment at all, the situation is treated as if it were a bilateral default under Article 9(2), with the Centre making a partial substitute appointment on behalf of the defaulting co-parties only. By contrast, cases involving competing or partial appointments are treated as a "failure to constitute the arbitral tribunal" under Article 10(3), triggering the Centre's plenary appointment powers under that provision.[5]

This articulation of institutional practice supplies the starting point for the first critique advanced in this paper. The gravamen of that critique is that the bifurcation introduced by the Centre's differentiated practice fractures what Article 10 intended as a single, undifferentiated default mechanism and constitutes the originating source of the downstream difficulties analysed below.

B. Three Preliminary observations

Three preliminary observations frame the critique of this practice.

First, although institutional practice has not converged on a single response to appointment deadlock among co-parties—ranging from partial default appointments to plenary reconstitution, to a combination of the two—one constant cuts across that normative diversity: no arbitral institution elevates the *form* of breakdown into a governing analytical category mediating its response. Institutions disagree about how far intervention should extend once coordination fails; they do not predicate the choice between modes of intervention on a morphological taxonomy.

Secondly, the Centre's practice of differentiation is unsupported by any reasoning. The Practice Notes do not explain why morphology should govern institutional response. The distinction is asserted, not justified. No account is offered of the normative

[5] See Practice Notes, above n 4, at p 5: "The appointment of the Arbitral Tribunal by the Centre in multiparty arbitrations, where the parties have not agreed otherwise in light of Articles 9(2) and 10 of the Rules: Article 10(1) of the Rules stipulates: "For the purposes of article 9, paragraph 1, where three arbitrators are to be appointed and there are multiple parties as claimant or as respondent, unless the parties have agreed to another method of appointment of arbitrators, the multiple parties jointly, whether as claimant or as respondent, shall appoint an arbitrator". Article 10(3) of the Rules stipulates: "In the event of any failure to constitute the arbitral tribunal under this article, the Centre shall, at the request of any party, constitute the arbitral tribunal, and in doing so, may revoke any appointment already made, and appoint or reappoint each of the arbitrators and designate one of them as the presiding arbitrator." Article 9(2) of the Rules stipulates: "If within 30 days after the receipt of a party's notification of the appointment of an arbitrator the other party has not notified the first party of the arbitrator it has appointed, the second arbitrator shall, at the request of the first party, be appointed by the Centre." The application of these two Articles gave rise to three cases: (1) The case where the multiple respondents have not made any appointment. In this case, the Centre shall appoint an arbitrator on behalf of the defaulting respondents upon the request of the claimant(s) pursuant to Article 9.2 of the Rules. (2) The case where multiple respondents appoint more than one arbitrator instead of jointly appointing one. (3) The case where one or more respondents appoint an arbitrator or more than one arbitrator, while the remaining respondent(s) fail to make an appointment or do not participate in the proceedings. The Centre's practice is to consider that cases (2) and (3) amount to a failure to constitute the arbitral tribunal under Article 10, and therefore, the Centre shall constitute the tribunal upon the request of any party, and in doing so, may revoke any appointment already made, and appoint or reappoint each of the arbitrators and designate one of them as the presiding arbitrator."

principles it serves, the conception of equality or autonomy it promotes, or the textual basis for the differentiated treatment.

That silence is plausibly explained by the possible intuitive appeal of the distinction between inaction and open disagreement. Inaction may bespeak non-engagement—and thus invite limited intervention; open disagreement may suggest engagement and misaligned interests—and therefore seem to call for a more robust response. The distinction feels self-evident. But as discussed shortly, intuition is a fragile foundation: administrative plausibility does not ensure conceptual coherence, operational stability, or normative defensibility.[6]

Finally, the singularity of the practice and the absence of any articulated rationale for it are likely connected. Any attempt at justification would have involved comparative engagement, which in turn would have exposed the absence of any institutional analogue. The failure to articulate reasons likely insulated the practice from external validation and so from heightened scrutiny. Had the practice been reasoned through expressly, its textual, epistemic, and normative fragility would have surfaced.

C. Textual critique of the Centre's Practice

The validity of the Cairo Centre's practice depends upon the existence of a textual pathway for limited default appointment in some cases of multiparty breakdown, alongside another for plenary intervention in others. No such pathways exist under the 2011 Cairo Rules. Neither the language nor the structure of the Rules supports the morphological differentiation of modes of institutional intervention reflected in the Centre's practice.

The Centre's principal express textual anchor for limited intervention in cases of non-nomination is Article 9(2). But that provision is calibrated to a strictly bilateral setting. It presupposes two parties, each vested with an individual and symmetrical right to appoint an arbitrator; and it addresses a specific and narrow problem—unilateral inaction by one party typically following notification of an appointment by the other. The remedial logic is correspondingly simple: where one party fails to exercise its individual appointment right, the Centre completes the missing appointment on its behalf.[7]

That logic does not translate to multiparty proceedings governed by Article 10(1). In that context, no single party holds an individual appointment right capable of unilateral exercise. The obligation imposed by Article 10(1) is collective: multiple parties, acting jointly, must produce a single nomination. Silence in that setting is not an election to forfeit a personal privilege; it is the failure of a group to achieve the coordination required for joint action. The conceptual predicate for Article 9(2)—an

[6] See discussion below, Sections II.D and II.E.

[7] Article 9(2) of the 2011 edition of the Cairo Rules reads as follows: "If within 30 days after the receipt of a party's notification of the appointment of an arbitrator the other party has not notified the first party of the arbitrator it has appointed, the second arbitrator shall, at the request of the first party, be appointed by the Centre."

individually held right capable of autonomous exercise and forfeiture—is therefore absent. Nothing in the language of Article 9(2) suggests that it was intended to operate as a surrogate default mechanism for failures of collective coordination under Article 10(1).

Nor does Article 10(3) supply a residual textual basis for the Centre's differentiated practice. That provision anchors the Centre's plenary authority in cases of failure to constitute the tribunal under Article 10. Its operative verb is categorical: the Centre "shall, at the request of a party, constitute the arbitral tribunal…." The language is all-or-nothing. It does not authorise partial intervention, incremental correction, or the completion of isolated steps within an otherwise incomplete appointment chain. To constitute a tribunal is to bring it into existence as a functioning adjudicatory body; partial default appointment on behalf of silent co-parties does not achieve that result: following such an appointment, no tribunal yet exists; further agreement between party-appointed arbitrators remains necessary, and further failure remains possible.

It follows that the Centre's practice cannot plausibly be characterised as an exercise of plenary authority under Article 10(3). At the same time, it cannot be grounded in Article 9(2) either without collapsing the distinction between unilateral default and collective coordination failure. The Centre's practice therefore occupies a textual wilderness. It is neither authorised by the bilateral default provision nor encompassed by the plenary constitution power intended for multiparty conditions.

The textual difficulty is structural rather than technical. The 2011 edition of the Rules provide for two distinct appointment architectures: one bilateral, built around individual appointment rights and limited default substitution (Articles 8 and 9); the other multiparty, built around collective choice and plenary full replacement (Article 10). What the Rules do not provide is an intermediate mechanism that would permit the Centre to decide between limited and plenary intervention depending on how a collective failure happens to present itself. The Centre's practice presupposes an intermediate category that the text does not sustain.

In short, the morphological differentiation on which the Centre's practice rests finds no support in the language, structure, or internal logic of the 2011 Cairo Rules. The Rules recognise different contexts of appointment; but they do not recognise diverse forms of failure within the multiparty context—still less attach distinct institutional consequences to them. The differentiation is imposed on the text, not derived from it.

D. Epistemic critique of the Centre's practice

Epistemic analysis concerns knowledge and inference. It asks what can legitimately be known or inferred from the information available to a decision-maker. In the present context, the question is what inferences may the Cairo Centre draw from observable behaviour—such as absent, partial, or competing nominations—in cases of multiparty appointment failure. The premise of the inquiry is that the Centre is acting rationally and that, accordingly, its differentiated responses presuppose that the form in which

nomination failure presents is a marker of normative substance capable of justifying differentiated institutional response.

Because the Centre has not articulated the reasoning by which it moves from observable behaviour to differentiated response, the analysis that follows proceeds by reconstructing the inferences that the Centre must be drawing, in order for its practice to be even minimally intelligible. Two dimensions are potentially relevant to that reconstruction. The first concerns compliance effort: whether co-parties genuinely attempted, but failed, to discharge their collective obligation to nominate an arbitrator jointly, or whether no meaningful attempt was made—such as might, on the Centre's presumptive view, justify either suppressing or preserving the opposing side's appointment choice. The second concerns interest alignment: whether the co-parties' interests converge or diverge in a manner that bears upon the reasonableness of treating them as a coherent appointing unit. The Centre's practice appears to presuppose that silence reflects limited engagement, interest alignment, or both, thereby justifying limited intervention and preserving the other side's choice, while overt disagreement reflects active engagement, deeper divergence, or both, thereby calling for plenary takeover and suppressing all autonomous action. Although positive law recognises only the latter consideration, i.e. equal treatment, as potentially normatively salient, to the extent that both might operate implicitly in the Centre's differentiated practice, each requires explicit epistemic scrutiny.

That scrutiny exposes a central epistemic difficulty: the Centre's approach treats outwardly different forms of non-compliance as epistemically distinct. Absent, partial, and competing nominations are taken to evidence materially different underlying conditions. Yet these behaviours are merely different surface manifestations of a single socio-juridical fact: the failure of collective coordination to produce the required joint nomination within the prescribed time. To treat them as belonging to different evidentiary categories is to commit a category error. In a joint action regime, the legally salient datum is the absence of the mandated outcome. The form taken by that absence does not, without more, carry independent evidentiary significance. The point is not that behavioural form can never correlate with underlying conditions, but that it cannot do so in a manner that is sufficiently stable, observable, or institutionally verifiable to justify rule-level differentiation.

Once the Rules require a single joint act, the failure to produce that act exhausts what can reasonably be known at the level of outcome. Behavioural variation does not reintroduce informational content. The epistemic mistake implicit in the Centre's approach is to assume that different manifestations of the same failure encode different factual signals about effort or, more importantly, alignment. They do not. The absence of the joint nomination is epistemically opaque as to the internal dynamics that produced it. This opacity is structural rather than contingent: it flows from the nature of collective decision-making. Once multiple parties are required to produce a single act, the internal process by which that act is attempted or fails is necessarily hidden from external observation; and so are the reasons for the failure. The institution sees only the outcome, or the absence of it. To read more into either is to

speculate. The Rules neither provide a mechanism for inquiring into internal coordination dynamics nor authorise the Centre to reconstruct those dynamics from behavioural cues.

This epistemic opacity is best illustrated by silence. Silence does not indicate whether co-parties attempted, but failed, to coordinate, or whether no meaningful coordination effort was made. In a regime that requires a single joint nomination, silence may be the only legally coherent position available to co-parties whose coordination efforts have reached an impasse and who recognise that partial or competing nominations would be legally ineffectual. Silence may therefore mask sustained engagement rather than display indifference. To infer want of effort, passivity, or disengagement from silence is to mistake the limits of observation for probative evidence.

More importantly still, epistemic opacity exists in relation to interest alignment too. The absence of a joint nomination does not disclose whether co-parties' substantive interests are aligned or divergent; nor does the form taken by that absence supply reliable insight into their internal configuration. Apparent disagreement may reflect differences of preference, strategy, or professional judgment rather than conflicting interests; conversely, silence may coexist with profound interest divergence masked by temporary coordination or tactical restraint. In a regime that observes only outcomes, not deliberative processes, interest alignment is not an observable fact but an inferred construct. To treat the outward form of nomination failure as the touchstone by which to infer that construct is to attribute explanatory weight to conduct that cannot bear it, and to convert epistemic indeterminacy into a basis for institutional judgment.

Nor is the epistemic problem confined to silence either. Partial or competing nominations do not possess the epistemic significance that the Centre's differentiated practice implicitly assigns to them. Competing nominations, too, may reflect divergent preferences rather than divergent interests. Co-parties may be fully aligned in their legal and commercial objectives—such as to justify treating them as a single appointment unit—yet disagree on the optimal arbitrator, the relative importance of expertise, or the desirability of particular professional profiles. Partial nomination may reflect internal governance constraints, sequencing difficulties, or strategic restraint rather than fractured alignment. In none of these cases does the outward form of nomination behaviour permit a reliable inference about either compliance effort or interest alignment.

A further epistemic difficulty arises even within the Centre's own second category of failure, which groups partial nomination and competing nomination together as functionally equivalent triggers for plenary intervention. That grouping is internally inconsistent. Partial nomination is characterised by the coexistence of silence and action: one or more co-parties nominate, while others do not. Competing nomination, by contrast, is characterised by action on all sides, albeit action that fails to converge. From an epistemic standpoint, these two situations are not merely distinct; they are opposites along the very dimension the Centre's practice appears to treat as salient. Yet the Centre collapses them into a single evidentiary class, implicitly treating both

as equally probative of a coordination failure of a kind that warrants plenary takeover. That move cannot be justified on epistemic grounds. If silence is epistemically opaque—as the preceding analysis demonstrates—then partial nomination, which contains silence as one of its constitutive elements, cannot coherently be treated as epistemically equivalent to overt disagreement. The Centre's practice thus not only over-reads behavioural form across categories; it also contradicts itself within its own taxonomy by attributing decisive evidentiary significance to action in one context while disregarding the presence of silence in another. This internal inconsistency further underscores that behavioural morphology cannot sustain the inferential burden that the Centre's differentiated responses presumptively require.

In sum, behavioural form does not encode a stable or interpretable signal about normatively meaningful considerations. The same outward behaviour may arise from radically different internal dynamics; conversely, similar internal dynamics may present themselves in different outward forms. Morphology is thus an unreliable proxy for the very facts the Centre's differentiated responses implicitly presuppose. That unreliability is compounded by an internal inconsistency in the Centre's own taxonomy, which treats partial nomination—where silence and action coexist—as epistemically equivalent to competing nomination, even though those situations diverge along the very behavioural dimension the taxonomy purports to privilege.

The epistemic error, therefore, is not merely that the Centre's implicit inferences may sometimes be wrong; it is that they cannot be reliably right, because the data from which they are drawn cannot support the inference. Behavioural morphology is an equivocal datum. The epistemic failing of the Centre's practice lies in treating it as evidentiary when it is not. The failure of joint nomination yields no heuristically useful information about normatively relevant differentiators. An institutional response based on such inferences rests on an epistemic foundation incapable of bearing the weight placed upon it.

E. Normative critique of the Centre's practice

Normative analysis concerns justification rather than inference. It asks not what can be known, but what may permissibly be done. The normative question here is straightforward: may an institution rely on behavioural morphology as the normative index of differentiated responses to failures of joint nomination? Put differently, is the outward form in which non-compliance presents itself a plausible measure of the normative gravity of the failure jointly to appoint an arbitrator and, by extension, of the permissible scope of institutional response? The answer to both questions is no.

Behavioural morphology is a descriptive feature of how non-compliance manifests: it is not a normatively relevant criterion for determining whether limited intervention preserves procedural equality or more intrusive intervention is required to restore it. Nor is it a relevant determinant of compliance by one side sufficient to preserve or suppress autonomous action by the other. Silence and overt disagreement are not evaluative categories. They do not, as such, bear upon whether, for instance, co-parties can fairly be treated as a coherent appointing unit, whether functional equality

between the parties is maintained, or whether the integrity of the appointment mechanism requires heightened institutional control.

A further normative difficulty arises even if one accepts, for the sake of argument, the Centre's presumptively implicit premise that total silence may justify a benign inference—such as sufficient interest alignment among co-parties to permit limited institutional intervention. On that premise, the Centre's treatment of partial nomination is internally incoherent. Partial nomination is characterised by the coexistence of silence and action: one or more co-parties nominate, while others remain silent. If silence is normatively capable of supporting an inference of alignment when it is universal, there is no principled basis for treating silence as normatively inert when it is partial. The mere fact that one co-party speaks while another remains silent does not, without more, negate the possibility of alignment between them. Yet the Centre's practice treats partial nomination as normatively equivalent to overt disagreement and assigns it the same intrusive consequence—plenary institutional takeover—while treating total silence as normatively benign and assigns to it a less intrusive consequence—limited default appointment. That allocation of consequences cannot be justified by reference to any coherent normative account of equality. It distributes normative weight inconsistently across the Centre's own categories and thereby undermines the very justification the taxonomy appears to presuppose.

To conclude, where arbitral rules confer discretionary institutional authority to intervene following appointment breakdown, the assumption is that such discretion will be exercised by reference to normatively relevant considerations—most notably, whether co-parties can reasonably be treated as a coherent "side" for appointment purposes, and whether the chosen form of intervention preserves functional equality between the parties. Behavioural morphology is not a substitute for that inquiry. To allow it to function as such is to replace normative assessment with an irrelevant categorical proxy.

The defect, therefore, is not that the Centre considers factors that might, in other institutional designs, be normatively relevant; it is that it substitutes an irrelevant criterion for a relevant one. By treating silence and its opposites as dispositive, the Centre permits a non-normative distinction to determine the allocation of institutional power. That move is incompatible with the principle of equal treatment. Equality does not require that all failures appear identical; it requires that distinctions be justified by reasons that bear upon the normative purpose of the distinction drawn.

It follows that, even on the hypothetical assumption that the text of the 2011 edition of the Rules permits differentiated institutional responses—which it does not—the Centre's practice would still remain indefensible. Where it exists, institutional discretion must be exercised by reference to normatively relevant criteria. Behavioural morphology is not one of them.

III. Tribunal constitution under the 2024 Cairo Rules

A revised rulebook ordinarily presents an opportunity to close gaps and enhance coherence; in the matter of tribunal constitution, the 2024 edition of the Cairo Rules does the opposite. This section begins with a brief factual account of the principal textual change between the 2011 and 2024 editions of the Cairo Rules that is relevant to the present discussion. It then examines the professed purpose and effect of that change as articulated by the administering institution. Finally, it challenges that institutional articulation and advances an alternative assessment of the effect of the revisions—namely, a radical re-encoding of the logic of institutional intervention.

A. The amended Article 11 and its putative effect

Of the three changes that the 2024 Cairo Rules introduce to Article 10 of the 2011 Rules (now renumbered as Article 11), only one is directly relevant to the present discussion—the introduction of an all-new Article 11(2).[8] That new paragraph, without counterpart in prior iterations of the Cairo or UNCITRAL Rules, reads as follows:

[8] The other two changes are also problematic. The first is the shift from the formulation that the multiple parties "shall appoint an arbitrator" to the requirement that they "shall nominate an arbitrator." One might be forgiven for supposing that this change reflects a transition to a regime of institutional confirmation—like, for instance, the ICC or the LCIA Rules. Oddly, however, the 2024 edition of the Cairo Rules functions differently in practice. Though the parties' role is now confined to nomination, and though the constitutive act of appointment is reserved for the institution, the appointment is in practice treated as a purely administrative non-discretionary step: once a nominee accepts the mission, the appointment follows as night does day. There is no power to confirm as such being exercised. The only limited exception to this is the Centre's right, acting under Article 12(3), with the approval of its Advisory committee, to "not proceed with the appointment of any arbitrator due to past failure(s) to comply with his or her duties under the Rules." This understanding of the appointment process is open to doubt, not least because it precludes the Centre refusing to appoint an arbitrator demonstrably ineligible under the terms of the parties' agreement. See the discussion at note 15 below. The second change is one of signalling. Unlike its predecessor, revised Article 11 is given an express title: "Constitution of the arbitral tribunal in multi-party arbitration." That titling choice matters because it frames the reader's expectations as to scope. The difficulty is that the framing is internally unstable. Paragraph 11(3), which deals with party agreement on a number of arbitrators other than one or three, is not confined to multi-party cases. It is a general rule on tribunal size whenever the parties so agree. Locating that provision under a heading that is explicitly and exclusively multi-partite invites interpretive friction: the title encourages a contextual inference of limitation that the text of paragraph 11(3) does not sustain. That mismatch is not merely cosmetic: when combined with the change (dating back to the 2011 edition of the Rules) to the trigger for plenary institutional takeover at paragraph 11(4)—from failure to constitute the tribunal "under these Rules" to failure "under this article"—the title becomes capable of doing real mischief. A multiparty-exclusive heading invites the reader to treat Article 11 as a self-contained regime for multi-party constitution; the narrowed trigger reinforces that impression by tethering institutional intervention to failures "under this article." Yet the inclusion within Article 11 of at least one provision of general, non-multiparty scope undermines the coherence of that framing. The provision simultaneously signals exclusivity and resists it. That internal tension is precisely the kind of drafting seam likely to be exploited in appointment disputes, with one side invoking the title and trigger language to cabin the article's reach, and the other relying on the generality of specific paragraphs—and the practical imperative of constituting a tribunal—to argue for a more integrated, functional reading of the Rules. By contrast, under the 2011 Cairo Rules, Articles 8 to 10 were grouped under the single heading "Appointment of Arbitrators." Articles 8 and 9 governed the appointment of sole and three-member tribunals in bilateral proceedings, while Article 10 addressed situations involving multiple claimants or respondents, as well as party agreement to tribunals composed of a number of arbitrators other than one or three. That structure raised no comparable difficulty, as the overarching heading accurately captured the subject matter of all three provisions.

> If the concerned multiple parties fail to nominate an arbitrator within the time limit set forth under article 10, paragraph 2 or 4 of the Rules, as the case may be, the Centre shall appoint such arbitrator pursuant to article 10, paragraph 2 or 4 of the Rules.[9]

The Cairo Centre's formal position, stated expressly in case correspondence, is that paragraph 11(2) merely codifies its existing administrative practice of making partial default appointments where co-parties make no nominations at all. The development is therefore formal rather than substantive: instead of pressing the bipartite Article 9(2) under the 2011 Rules (now renumbered as Article 10(2)) into service, the Centre now relies on paragraph 11(2) as the textual vehicle for the same bifurcated administrative practice. This was presumably done to neutralise the textual objection that the Centre is misusing a default appointment mechanism designed for bilateral proceedings to deal with multiparty arbitrations.

This vehicular change apart, cases of no nomination continue to invite exactly the same response—namely, a limited substitute default appointment, while partial and competing nominations continue to be characterised as failures to constitute the tribunal and, therefore, to trigger the exercise of plenary institutional takeover powers under the general failsafe mechanism in the now-renumbered Article 11(4). The practical position is thus one of continuity rather than change. The same morphological taxonomy of failure is maintained, and with it the differentiated institutional responses; only the textual rubric shifts. Indeed, this is all expressly confirmed by a new set of Practice Notes recently published, which reproduce their predecessors on the point at issue.[10]

True to form, the Centre has provided no justification for the continuation of its bifurcated approach to multiparty tribunal constitution under the new Rules. The sole "exception" is a passing invocation, in formal case correspondence, of the cross-reference in Article 11(2) to Article 10(2) as purported justification for treating Article 11(2) as the codificatory exercise the Centre claims it to be. That invocation—entirely bereft of articulated reasoning—is examined in due course.[11]

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[9] For ease of reference, the full text of the revised Article 11 of the 2024 edition of the Cairo Rules is reproduced below (with the italicised passages indicating changes): Article 11 – *Constitution of the arbitral tribunal in multiparty arbitration*. 1. For the purposes of article 10, paragraph 1 of the Rules, where three arbitrators are to be appointed and there are multiple parties as claimant or as respondent, unless the parties have agreed to another method of appointment of arbitrators, the multiple parties jointly, whether as claimant or as respondent, shall *nominate* an arbitrator. *2. If the concerned multiple parties fail to nominate an arbitrator within the time limit set forth under article 10, paragraph 2 or 4 of the Rules, as the case may be, the Centre shall appoint such arbitrator pursuant to article 10, paragraph 2 or 4 of the Rules*. 3. If the parties have agreed that the arbitral tribunal is to be constituted of a number of arbitrators other than one or three, the arbitrators shall be appointed according to the method agreed upon by the parties. 4. In the event of any failure to constitute the arbitral tribunal under this article, the Centre shall constitute the arbitral tribunal, and in doing so, may revoke any appointment already made, and appoint or reappoint each of the arbitrators and designate one of them as the presiding arbitrator.

[10] Practice Notes Under the Arbitration Rules in Force Since 15 January 2024 (December 2025), at https://crcica.org/rules/arbitration/CRPN024EN.pdf; p 4.

[11] See discussion under III.B.3.

Otherwise, there are no published *travaux préparatoires*, consultation records, or equivalent materials capable of illuminating the deliberative process that led to the adoption of Article 11(2). That absence is unremarkable in itself: arbitration institutions do not, as a rule, publish preparatory materials accompanying revisions to their rules, and the Cairo Centre is in this respect typical.[12] It means nonetheless that whatever internal discussions may have informed the drafting of Article 11(2), they do not form part of an interpretive record accessible to users, tribunals, and reviewing courts. The Rules therefore fall to be construed by reference to their published text.

This notwithstanding, nothing in the analysis that follows depends on disputing that the intention behind Article 11(2) was what the Centre says it is. For present purposes, it may be accepted—indeed expressly accepted—that the provision was meant to entrench the Centre's administrative practice of differentiated responses to failures of joint nomination by co-parties. That practice has already been shown to be fundamentally misconceived. The difficulty now under consideration lies not in what the Centre sought to achieve, but in what the language it adopted in fact does, which is something other than what the Centre attributes to it.

B. The actual effect of the amended Article 11

Whatever its professed objective, Article 11(2), when properly construed, produces two significant changes to the Rules' administration, neither of which are currently acknowledged by the administering institution. First, it collapses—and thereby forecloses—the Centre's distinction between absent, partial, and competing joint nominations. Secondly, and more fundamentally, it recodes the entire logic of default appointment under Article 11. These effects flow from distinct features of the amended text and carry independent yet mutually reinforcing doctrinal consequences.

1. Collapse of morphological taxonomy

Whatever its ostensible aim, Article 11(2) now renders the Centre's differentiated treatment of different forms of failed joint nomination even less textually defensible than at any other time. This is because that new provision establishes a single obligation—"the multiple parties jointly, whether as claimant or as respondent, shall nominate an arbitrator"; a single trigger for institutional intervention—"if the concerned multiple parties fail to nominate an arbitrator within the time limit"; and a single mandated institutional response—"the Centre shall appoint such arbitrator." Three features of this structure are decisive.

[12] The principal exceptions are the UNCITRAL Arbitration Rules and the ICSID Convention and Rules. The former are the product of a public, intergovernmental drafting process accompanied by officially published *travaux préparatoires*—most notably the reports of Working Group II (Arbitration and Conciliation) and Secretariat notes—expressly intended to guide interpretation across jurisdictions. The latter are anchored in a multilateral treaty framework whose negotiating history has long been treated as part of the legitimate interpretive record by ad hoc committees and annulment panels. These are exceptional regimes. Their reliance on published preparatory materials reflects their quasi-legislative or treaty-based character, rather than a general feature of institutional arbitration rules.

First, the obligation under Article 11(1) is framed in terms of outcome, not conduct. The Rule does not enquire whether parties attempted to agree, negotiated in good faith, exchanged candidates, or otherwise behaved constructively. Nor does it ask whether their interests are aligned. It poses a single, simple question: was the legally required result produced? That drafting choice forecloses any distinction between failed attempt and no attempt, and excludes consideration of interest alignment. Article 11 is indifferent to the psychology and economics of compliance; it speaks in the language of deliverables.

Secondly, Article 11(2) defines a single trigger for intervention: failure, within the prescribed time, to nominate "an arbitrator" as required by Article 11(1). That trigger is unqualified. The provision does not distinguish between absent, partial, or competing nominations. Once Article 11(1) has defined nomination as joint nomination, there is no remaining interpretive space for subdividing failure into legally distinct categories. Article 11 is indifferent to the morphology of failure.

This is where the Centre's practice collides directly with the text. In practice, the Centre continues to treat the three forms of failed nomination as different juridical events. But Article 11(2) recognises only one: failure to produce the joint nomination required by Article 11(1). These scenarios differ in outward form, but not in legal substance. Elevating those differences into distinct triggers carrying different institutional consequences mistakes evidentiary variation for juridical distinction.

Thirdly, Article 11(2) is mandatory: the Centre "shall appoint such arbitrator." The difficulty is therefore not merely that discretion is being read into the Rule; it is that the Centre's practice depends on reading a limitation or nuance into Article 11(2) that the text does not contain. The implicit logic of the Centre's differentiated approach is that Article 11(2) applies only where the parties fail by doing nothing, whereas failures that present as action, even if partial, somehow fall outside its scope. That distinction has no textual basis. It is not interpretation. It is supplementation.

On this level alone, the Centre's inherited morphological taxonomy cannot survive the 2024 Rules amendment. Under this revised rulebook introduction of Article 11(2) creates a dedicated channel for *all* failures of joint nomination. Preserving a "no-nomination" category as normatively distinct is no longer merely misconceived; it is incompatible with the express language of the Rules.

2. Recoding of institutional authority under Article 11

Once it is accepted that Article 11(2) collapses the Centre's morphological taxonomy, it follows that the change it introduces necessarily recodes the logic of institutional intervention under Article 11 in its entirety. Under the amended provision, a failure of joint nomination is no longer subsumed within an undifferentiated and residual notion of a failure to constitute the arbitral tribunal; it is instead expressly identified, exhaustively regulated, and paired with a specific mandatory remedial mechanism. That shift is foundational. Not only do the Rules now refuse to distinguish among forms of failure; they also foreclose escalation. A failure of joint nomination can no

longer be characterised as a general failure to constitute the tribunal and so justify plenary institutional takeover under Article 11(4) (the successor to Article 10(3) under the 2011 rulebook); that pathway is closed by the structure of the amended text. Once the joint nomination obligation fails, the Rules prescribe a specific remedial response and exhaust the Centre's authority at that point. Nothing in the language, hierarchy, or internal logic of Article 11 permits the institution to move beyond Article 11(2) to a more intrusive mode of intervention.

Stated differently, the 2024 edition of the Cairo Rules do not merely reject classificatory differentiation; they also recalibrate power. All forms of failed joint nomination now justify one response only: a limited default appointment under Article 11(2). The consequence is not a discretionary choice among remedies, but a rule-based allocation of institutional competence. This follows directly from the mandatory and confined language of Article 11(2). Where multiple parties, whether as claimants or as respondents, fail to nominate "an arbitrator," the Centre "shall appoint such arbitrator." The authority conferred is limited to completing the missing appointment. It no longer extends to complete tribunal constitution.

Once this structure is recognised, the implications for Article 11(4) are unavoidable. By singling out a defined category of failure and attaching to it a specific and mandatory consequence, Article 11(2) necessarily reshapes the operation of the residual power in Article 11(4). That power can no longer operate as a general catch-all for failures of joint nomination of the kind addressed in Articles 11(1) and 11(2). To treat it as such would be to disregard the internal hierarchy that the amended text establishes within Article 11 itself.

This is a straightforward application of the *lex specialis* principle. Article 11(2) is directed to a precise contingency and prescribes an exclusive response. Article 11(4) is residual in character, designed to capture failures to constitute the tribunal arising within Article 11 that are not otherwise resolved by its preceding provisions. Once the failure of joint nomination is expressly regulated, it falls outside that residual category. Invoking Article 11(4) in this context would not fill a gap; it would bypass a rule, a specific rule.

The doctrinal consequence is clear. The Centre does not enjoy a discretionary choice between applying Article 11(2) and escalating to plenary reconstitution under Article 11(4). No such discretion is conferred by the text; to read it in would deprive Article 11(2) of independent operative effect consistent with its language and would collapse the architecture introduced by the 2024 Rules revision.

Once Article 11 is read according to its terms, the residual power in Article 11(4) is now effectively confined to failures arising under Article 11(3) only. Article 11 governs two situations: multiparty joint nomination under paragraphs (1) and (2), and party agreement to a tribunal composed of a number of arbitrators other than one or three under paragraph (3). With the 2024 revision, failures of joint nomination are exhaustively regulated by Article 11(2) and are paired with a specific, mandatory remedial response. There is therefore no residual work left for Article 11(4) to perform

in relation to multiparty appointment breakdowns. What remains is a narrow but coherent residual function tied to Article 11(3)—namely, where the parties have agreed to a non-standard tribunal size and to a bespoke method of appointment, and that method proves inoperable—because it is internally inconsistent, legally impermissible at the seat, or otherwise incapable of implementation in practice. In those circumstances, and only in those circumstances, Article 11(4) may still be engaged as a genuine backstop to constitute the tribunal.[13]

3. The limited purchase of cross-reference to Articles 10(2) and 10(4)

One final element of Article 11(2) warrants treatment. Article 11(2) states that where the relevant co-parties fail to nominate an arbitrator within the time limits set forth in Article 10(2) or 10(4) of the Rules, the Centre shall appoint such arbitrator "pursuant to Article 10, paragraph 2 or 4 of the Rules."[14] This is the internal cross-reference that, as previously explained, the Centre has vouchsafed, in laconic fashion, as justification for construing Article 11(2) as codification of the Centre's differentiated administrative practice in multiparty cases. In the absence of an articulated rationale, it is appropriate, as a matter of analytical fairness, to reconstruct the Centre's position in its strongest plausible form.

At its highest, the argument would proceed as follows. Articles 10(2) and 10(4) are bilateral default-appointment provisions. They presuppose a two-party structure and therefore, logically, contemplate only one mode of failure: the failure of a party to make any nomination at all within the prescribed time. In a bilateral setting, there can be no competing and no partial nominations; the only possible failure mode is silence. By cross-referring to those provisions, Article 11(2) should therefore be understood as importing not merely their time limits and mechanics, but also their underlying logic. On this view, Article 11(2) would be confined to cases of complete non-nomination by

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[13] The scope of Article 11(4) would have been materially wider had the Cairo Rules retained the UNCITRAL formulation extending plenary institutional powers to cases of tribunal formation "under the Rules." That formulation would have allowed plenary intervention across the entire appointment architecture, irrespective of where the breakdown occurred. For some obscure reason, the Cairo Rules rejected that model as early as 2011, confining the trigger to failures "under this article." That institutional choice, carried through the 2024 edition of the Rules, significantly narrows the ambit of residual institutional power to constitute the tribunal. Its significance becomes decisive once Article 11(2) is understood to operate exhaustively. By pairing a defined category of failure with a confined and mandatory remedy, the amended text leaves Article 11(4) with no purchase over multiparty nomination at all. The residual power survives, but only at the margins. Its function is no longer to police or escalate responses to multiparty deadlock, but merely to rescue tribunal constitution where an agreed non-standard appointment architecture collapses for some other reason.

[14] Article 10(2) reads: « If within 30 days after the receipt of a party's notification of the nomination of an arbitrator the other party has not notified the first party of the arbitrator it has nominated, the second arbitrator shall be appointed by the Centre. » Article 10(4) reads: « If the parties have not agreed upon the number of arbitrators and the Centre has decided that the dispute shall be referred to three arbitrators in accordance with article 7, paragraph 1 of the Rules, the claimant shall nominate an arbitrator within 30 days after the receipt of the Centre's decision, and the respondent shall nominate an arbitrator within 30 days after receiving notice of the claimant's nomination. If a party fails to nominate an arbitrator, the Centre shall appoint the arbitrator. The appointment of the third arbitrator who will act as the presiding arbitrator of the arbitral tribunal shall be in accordance with paragraph 3 of this article.»

multiple parties acting jointly, leaving situations of partial or competing nominations to continue to attract the Centre's plenary power under Article 11(4).

That is the most charitable reconstruction of the Centre's position. It nevertheless fails at the threshold.

The premise on which the argument rests is incorrect. Articles 10(2) and 10(4) do not presuppose silence. Although they operate in bilateral settings, they are triggered by failure to make a *valid* nomination within the prescribed time. That failure may arise from inaction, but it may equally arise from action that does not conform to the requirements of the arbitration agreement or the law. A party may nominate an arbitrator who does not satisfy an agreed nationality requirement, lacks a required qualification, or otherwise fails to meet an eligibility criterion. In such circumstances, the party has acted, but the nomination is ineffective, and the default appointment mechanism under Article 10(2) or 10(4) may properly be engaged. Bilateral default appointment is thus triggered by non-compliance, not by silence as such.[15]

Once this is recognised, the inference the Centre presumably seeks to draw from the cross-reference collapses. Articles 10(2) and 10(4) do not embody a logic of silence as opposed to contestation. They too are indifferent to behavioural form. They do not classify failure; they respond to it. Against that background, the Centre's reliance on Articles 10(2) and 10(4) cannot support the proposition that Article 11(2) is confined to cases of silence.

[15] In making this argument, I recognise that the Centre's current practice is to consider that cases of ineligible nominations are not addressed through Article 10(2), but instead are dealt with under the removal process prescribed by Article 13 (on the basis that the arbitrator does not "fulfil the legal or contractual requirements"), and, if a party persists, through substitution by the Centre under Article 15. That analysis, however, encounters two serious difficulties. First, Article 13 is structurally and textually a removal provision, not a nomination-confirmation mechanism. It presupposes an arbitrator already in office and, until the 2024 amendments, every ground for removal concerned the arbitrator's conduct or capacity in the discharge of that office. The newly added reference in Article 13 to failure to "fulfil legal or contractual requirements" is embedded within that same structure. Applying the *ejusdem generis* principle—under which a general expression is confined by the specific terms that precede it—the reference must be read as relating to requirements governing the *performance* of the mandate, not to eligibility defects at the moment of appointment. If (as appears to be the case) the intention was for Article 13 to capture eligibility requirements, the drafting does not achieve that aim. This is another instance of poor draftsmanship and unintended consequences. Secondly, the Centre's current approach conflicts directly with Article 32 of the Rules. This provides that a party that fails promptly to object to non-compliance with the Rules or with any "requirement of the arbitration agreement" waives the right to rely on that objection. Eligibility requirements fall squarely within that category. If ineligible nominations are left to be cured later through removal, the waiver rule becomes incoherent: a party could knowingly remain silent at the appointment stage and later resurrect the issue through a removal request. That would not only undermine procedural finality, but also create perverse incentives, inviting tactical silence and strategic behaviour designed to keep an eligibility objection in reserve as a contingent weapon later in the proceedings. This, again, reinforces the first argument. For both reasons, ineligible nominations cannot coherently be dealt with through Articles 13 and 15 but must instead considered at the appointment stage—i.e., in bilateral proceedings, under Articles 10(2) and 10(4). However, given the peculiarity of the Centre's current administration of the arbitrators' appointment process under the Rules (discussed at note 8 above), a rethink of both these elements—how arbitrators are appointed following party nomination, and how eligibility requirements are enforced—is now urgent.

Even if that threshold difficulty were set aside, the Centre's position would still fail. One reason that cross-reference does not import a taxonomy of failure into Article 11(2) is that the provision in question performs its own definitional sorting. Article 11(2) identifies its operative trigger as the failure of multiple parties to produce the joint nomination required by Article 11(1). That trigger is functional and outcome-based. It does not depend on whether the failure arises from silence, partial action, or competing action. Once the required joint act has not occurred within the prescribed time, Article 11(2) applies. The cross-reference to Articles 10(2) and 10(4) presupposes that failure; it does not define it.

Put differently, the Centre's presumptive argument assumes that because bilateral proceedings admit of fewer morphological possibilities of failure, the default-appointment provisions developed for those proceedings must be conceptually limited to silence. That assumption is wrong even in bilateral cases; but even if it were right, it would still not follow that the same limitation applies when those provisions are expressly incorporated into a multiparty regime governed by a distinct substantive obligation. This is because Article 11(2) itself expressly regulates multiparty proceedings and expressly addresses the consequences of failure to comply with a joint nomination requirement. Once that obligation is breached—however the breach manifests—the juridical fact is the same: the nomination required by the provision has not been produced. Nothing in Articles 10(2) or 10(4) converts that failure into something narrower. Those provisions supply timing and mechanics; they do not narrow the substantive trigger. The Centre's reading would invert the logic of incorporation by reference. Article 11(2) is the primary provision. It defines, expressly and exhaustively, the substantive condition that triggers institutional intervention in multiparty cases. Articles 10(2) and 10(4), by contrast, are secondary. They regulate timing and mechanics once a failure has occurred. Their function is ancillary, not classificatory.

The point bears emphasis. Incorporation by reference operates in one direction only. The substantive rule determines when the procedural machinery is engaged; the procedural machinery does not redefine the scope of the substantive rule. The Centre's position would reverse that relationship. It would allow the default mechanics of Articles 10(2) and 10(4) to narrow, by implication, the class of failures to which Article 11(2) applies, even though Article 11(2) is the only provision in the Rules that speaks substantively, directly, and expressly to the failure of joint nomination in multiparty proceedings.

That inversion is doctrinally untenable. Articles 10(2) and 10(4) do not purport to define failure, still less to distinguish among its forms. To treat them as implicitly importing a morphology of silence into Article 11(2) is to elevate procedural default rules into substantive gatekeepers and to deprive Article 11(2) of independent normative content that is consistent with its text. Had the drafters intended Article 11(2) to apply only where co-parties remained entirely inactive, they could—and should—have said so explicitly. They did not. Instead, they defined the trigger by reference to outcome and then directed the institution to existing procedural

machinery for effecting the resulting default appointment. The cross-reference therefore presupposes the scope of Article 11(2); it cannot be used to re-engineer it. On its proper reading, therefore, the purchase of the cross-reference to Articles 10(2) and 10(4) is limited: it clarifies timing and procedure; it does not sustain the differentiated normative structure that the Cairo Centre seeks to preserve.

IV. Conclusions and implications

The analysis in Part I yields two propositions independent in their logic but cumulative in their institutional implications.

The first is negative but fundamental. The Cairo Centre's continuing practice of conditioning the scope of institutional intervention on a morphological taxonomy of joint nomination failure is misconceived at source. It is textually untethered, epistemically speculative, and normatively misdirected. Textually, it depends on an intermediate category and an escalatory pathway that the rulebook does not supply. Epistemically, it appears to treat surface behaviour as though it disclosed stable internal facts about compliance and, more importantly, about interest alignment, when in fact the structure of joint nomination renders those facts observationally inaccessible. Normatively, it allows descriptive form to do justificatory work that only equality considerations ought properly to perform. Taken together, these defects are constitutive: they mean that the practice is not merely contestable at the margins, but conceptually unstable as a mode of rule application.

The second proposition is positive and, for present purposes, dispositive. Whatever the Centre may have intended by its introduction, Article 11(2), far from codifying an existing administrative practice, has in fact re-encoded the entire logic of institutional intervention in multiparty tribunal constitution under the present Cairo Rules. The amendment does not anchor the earlier taxonomy to the text; it renders that taxonomy otiose. It does not preserve a space for escalation; it forecloses its possibility. It does not leave the Centre with a menu of responses calibrated to behavioural forms; it reallocates competence through a mandatory and confined mechanism directed to a single, outcome-based failure. Article 11(2) is not a new label for an old discretion. It is a structural reassignment of what counts as relevant failure and what amounts to permissible institutional response.

Read together, these two propositions illuminate not only why the Centre's current reading of Article 11(2) is unsustainable, but also why it is advanced. It is advanced for two obvious reasons: to preserve the Centre's erstwhile differentiated practice; and to avoid recognising that Article 11(2) has re-encoded the logic of multiparty tribunal constitution in a manner that excludes institutional discretion altogether. The insistence, however, comes at a significant cost to the institution's credibility. It requires a sequence of intellectual moves difficult to reconcile with disciplined rule-making and rule-application: reading an unexpressed limitation into a mandatory and confined provision; using cross-referenced default mechanics to perform substantive delimiting work; and reactivating a residual power precisely where the amended text introduces a special rule. This is not continuity through interpretation; it is

reconstruction through administrative fiat. It asks users and reviewing courts to accept that the rulebook says one thing while institutional practice continues to do another. That is precisely the kind of divergence that turns routine appointment disagreements into systemic risk.

Beyond these conceptual and interpretive analytics, the central policy point is that the Cairo Centre can have no institutional interest in preserving an administrative practice that was misconceived from the outset. A practice that lacks textual warrant, rests on epistemic overreach, and is normatively misdirected—a practice that can claim not a single redeeming feature; for which no coherent justification has ever been articulated; and which no institution has ever seen fit to adopt—is not an asset to be conserved; it is a liability to be retired.

A further policy lesson emerging from the foregoing critique is the need to approach rule revision with caution, care, and conservatism. Even modest textual changes can generate effects that are neither local nor intuitive. Institutional rules revision are typically the product of extended consultation, sustained comparative analysis, and the accumulated judgment of large and diverse professional communities over extended periods of time; where amendments are instead developed within limited and closed deliberative settings, the risk of unintended consequence is acute. Endogenous rule-making processes tend to narrow perspective, compress debate, and insulate foundational assumptions from challenge—effects that bear directly on the quality, robustness, and resilience of the resulting work product. Precisely because arbitral rules operate at the intersection of consent and authority in the sphere of private social ordering, their legitimacy cannot be sustained by building internal consensus alone; legitimacy requires structured engagement with the broader arbitral community in the lead-up to rule revision. Engagement must go beyond the solicitation of informal feedback: it must involve processes designed to elicit reasoned, representative, and contestable responses from stakeholders with differing perspectives, experiences, and interests. Proposed changes must be tested across multiple procedural configurations, jurisdictions, and enforcement environments. This requires time and resources.

This need for care and inclusiveness raises in turn the politically delicate question of internal allocation of institutional authority. In corporate and institutional governance, the diffusion of power across distinct administrative organs serves hard structural purposes. It is designed to improve deliberation, to mitigate the risk of concentrated error, to resist path-dependence and entrenchment of assumptions, and to guard against self-referential reasoning in decision-making within any single institutional node. By preserving functional separation and role fidelity among governing bodies, diffusion constrains the capacity of any one organ to convert contingent judgment into structural default. These features are not incidental: they reflect a recognition of institutional fallibility and an acknowledgment that legitimacy in complex organisations depends on decision-making processes that are contestable, corrigible, and resistant to error-hardening over time.

Those considerations apply with particular force in the governance of arbitral institutions. These institutions operate at the nexus of rule-making, rule-interpretation, and rule-administration. The distribution of authority within them among executive leadership, advisory bodies, and trustee-level oversight is not a matter of form: it functions to ensure that systemic choices are exposed to deliberative friction, that administrative practice is not insulated from reconsideration, and that no single institutional perspective acquires undue normative influence. Where executive initiative in rule revision or interpretation proceeds without sufficiently robust counterweights, the risk is not merely over-reach, but the gradual conversion of administrative convenience into rule meaning—the informal constitutionalisation of administrative practice. When that occurs, recalibrating internal authority in favour of deliberative pluralism becomes essential. Such recalibration should be regarded not as a constraint on effectiveness, but as a safeguard of institutional legitimacy in a system whose credibility depends on the suppression of discretionary drift.

The analysis now turns to the conditions and posture under which institutional critique is advanced in this paper. Questioning long-standing institutional practices is a serious undertaking, particularly where award validity is implicated. Arbitration depends upon continuity, confidence, and trust, and critique that fails to take those values seriously is rightly discounted. In systems dependent on confidence, even the articulation of doubt carries its own risks: uncertainty can become self-reinforcing, at times even where the doubt later proves to be misconceived. That risk is fully acknowledged here. The critique advanced in this paper is offered neither casually nor as an exercise in gratuitous scepticism; it reflects a contestable but deliberate judgment that, over the long term, the costs of silence are likely to outweigh the risks of candour in the circumstances examined. Few outcomes are more damaging to an arbitral institution than a judicial determination that tribunals have repeatedly been constituted in a manner inconsistent with the institution's own rules. Preventive candour, expressed in advance and with care, is therefore offered not as disruption, but as evidence of engagement and commitment to long-term institutional integrity.

Timing also matters. In one sense, much of the present critique would indeed have been timelier had it preceded the most recent Rules revision, in which case that revision might have been used to address it. That point is acknowledged. In another, the Cairo Centre now stands at a moment of genuine institutional renewal, marked by refreshed governance and leadership structures—a reconstituted Board of Trustees, a refreshed Advisory Committee, and a new Director—each bringing depth of experience and professional authority. Institutional competence is not in question. What is engaged instead is the familiar problem of path-dependence in complex procedural systems, and the corresponding need, from time to time, for deliberate reassessment.

Periods of renewal are particularly conducive to such reflection. They permit inherited practices to be examined with fresh eyes, without the distortions of personal investment and defensive justification. Legal institutions do not derive legitimacy from immunity to critique, but from their capacity to confront it, absorb it, and

respond where necessary. Willingness to revisit established practice is not a sign of fragility, but of mature institutional confidence exercised with deliberation.

This concludes the critical part of the project represented by this paper and prepares the ground for the forthcoming second instalment. Part II addresses what follows once the need for change is recognised by those bearing fiduciary responsibility for the institution in question: the available options, what each secures, what each costs, and what each signals to users, courts, and the wider arbitral community. The analytical narrative thus moves from the diagnostic to the remedial, and the focus shifts from interpretation to rule design. In the language of action theory, the objective of Part I has been to provide the Cairo Centre's leadership with reasons sufficient to act; Part II aims to offer reasons sufficient to choose.