Multiparty Tribunal Constitution: Structure, Choice, and Reform

The Case of the Cairo Regional Centre

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I. From Diagnosis to Design

This paper brings together, in its concluding part, the results of a three-part study and recasts them as an analytical framework within which policy choices may be made that determine institutional ordering and rule design.[1] The overall study has been

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[1] For the first two parts of the study, *see* Hafez, Karim, Critical Assessment of the Cairo Regional Centre's Rules and Practice (2 February 2026), available at SSRN: https://ssrn.com/abstract=6168706 (Part I); and Hafez, Karim, Multiparty Tribunal Constitution: Comparative Cartography, Normative Architecture, and Structural Diagnostics (March 11, 2026), available at SSRN: https://ssrn.com/abstract=6393200 (Part II).

concerned with the constitution of arbitral tribunals under the Cairo Regional Centre for International Commercial Arbitration Rules 2024 in multiparty settings—cases in which there is more than one claimant or more than one respondent—and, in particular, with the structural difficulty presented by joint nomination. Where multiple parties are required to agree upon a single arbitrator, coordination may fail. The Rules address that eventuality; the question that prompted the study is whether they are being correctly applied.

The enquiry proceeds on the footing that multiparty tribunal constitution is not a marginal complication but a structural stress point within arbitral procedure: it is at this juncture that the competing imperatives of party autonomy, equality of arms, and institutional functionality are brought into their sharpest tension. The present study is directed to that point of tension and to the manner in which the Cairo Rules 2024 seek, or fail, to resolve it.

The relevant provision is Article 11 of the Cairo Rules 2024.[2] Article 11(1) establishes the joint nomination mechanism in multiparty proceedings: it requires co-parties, whether aligned as claimant or respondent, jointly to nominate a single arbitrator as a condition of party-led constitution. Article 11(2) provides for the consequence of the mechanism's failure—namely, that where co-parties fail jointly to nominate an arbitrator, the Centre appoints the arbitrator on their behalf.

Part I of the study focused on the Cairo Centre's application of the newly introduced Article 11(2). Its central finding was that the Centre has misconstrued that provision at the level of structure. Article 11(2) is triggered by a single juridical event—the failure of joint nomination—and prescribes a single consequence: the completion of the tribunal through a limited default appointment. It does not distinguish between different ways in which that failure may manifest. It is indifferent, on its face, to whether co-parties remain silent, participate only in part, or advance competing nominations. On its proper interpretation, Article 11(2) is thus exhaustive of the legal consequences of failed joint nomination: it defines both the trigger and the response, without remainder.

The Centre's practice proceeds on a different premise. It introduces, as a threshold step, a taxonomy of failure—distinguishing between no, partial, and competing nominations—and treats those categories as determinative of the applicable institutional response. That taxonomy is not found in the text; it is not supported by

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[2] Article 11, entitled "Constitution of the arbitral tribunal in multi- party arbitration," provides: "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."

the structure; it rests instead on inferred distinctions as to the "quality" or "degree" of failure. On that basis, the scope of Article 11(2) is confined to a narrow subset of cases, namely those in which no co-party nominates any arbitrator at all.

The consequence is a bifurcated regime of application. Where the Centre characterises the situation as one of complete absence of nomination, it applies Article 11(2) and completes the tribunal by appointing the missing arbitrator, leaving any existing appointments undisturbed. Where, however, there has been any form of nomination—whether partial or competing—the Centre treats the situation as falling outside Article 11(2) and instead has recourse to Article 11(4). That provision operates on a materially different footing: it empowers the Centre to constitute the tribunal as a whole, including, where appropriate, the revocation of prior appointments and the appointment or reappointment of each arbitrator, together with the designation of the presiding arbitrator. What is presented as a difference in factual configuration is thus made to yield a difference in juridical consequence, notwithstanding that the Rules attach no such differentiation to the triggering event.

The analysis advanced in Part I goes further than merely exposing that inconsistency: it entails a positive claim as to the relationship between Articles 11(2) and 11(4). Properly understood, Article 11(2) leaves no residual category of "failure of joint nomination" upon which Article 11(4) may operate: once failure is defined in outcome-based terms, and once Article 11(2) prescribes a complete response to that condition, there is no operative space for recourse to plenary institutional constitution within the field of multiparty nomination. In that sense, Article 11(4) is not merely secondary but functionally displaced within that field: its operation is materially attenuated, confined to circumstances external to the defined trigger, and incapable of performing independent work within the domain of joint nomination.

The criticism developed in Part I is directed at that displacement. The basic argument advanced is that the distinction between no, partial, and competing nominations lacks textual foundation, rests on epistemically unstable inferences, and admits of no coherent normative justification. It substitutes, in place of the outcome-based trigger adopted by the Rules, a morphology of breakdown constructed in practice. The result is a structural disjunction between rule and application: a single juridical condition is fractured into multiple categories, each attracting a different institutional response. At the same time, it obscures the more fundamental point: that, on a correct reading of the Rules, the choice between limited completion and plenary reconstruction does not arise within the field of joint nomination at all. That disjunction is not merely theoretical: it bears directly on the constitution of the tribunal and, by extension, ultimately, on the validity and enforceability of the resulting award.

Part II considerably widened the analytical lens. It situated the problem of multiparty tribunal constitution within the broader landscape of arbitration law and practice, tracing how different systems—judicial, legislative, and institutional—have grappled with the tension between autonomy and equality. That exercise was not undertaken as a matter of descriptive completeness, nor to supply a catalogue of institutional

variation: it served a more precise and structurally necessary function within the study.

The point of departure lay in Part I. Having advanced a particular reading of Article 11(2) of the Cairo Rules 2024—namely, that failure of joint nomination constitutes a single juridical event attracting a single, limited consequence—the enquiry required external testing; it could not remain confined to the internal logic of the Cairo Rules: it had to be situated against the full range of responses that arbitration law and practice have developed to address the same structural difficulty.

Part II accordingly expanded the field of analysis to encompass not only the Article 11(2) model of rule-based completion, but also its principal alternative: plenary institutional constitution, together with the spectrum of intermediate models that lie between those poles. That alternative finds expression, within the Cairo Rules themselves, in Article 11(4), and, in paradigmatic form, in Article 10(3) of the UNCITRAL Rules (2021), of which Article 11(4) is the functional equivalent. The enquiry thus placed, on an equal analytical footing, two organising logics and the range of calibrated responses between them: on the one hand, a constrained, rule-based mechanism that preserves prior appointments and completes the tribunal; on the other, plenary institutional powers of constitution, under which the institution may revoke existing appointments and reconstruct the tribunal as a whole; and, between those extremes, models that combine elements of substitution, selection, and discretionary intervention.

Part II was directed to that question. It did not merely catalogue institutional rules. It examined how different systems have resolved the underlying tension between autonomy and equality; how courts have responded to actual or perceived asymmetry in tribunal constitution; and how legislative and institutional design choices reflect differing allocations of authority between rule and discretion. The enquiry was thus both classificatory and explanatory: it identified the available models, mapped the continuum between them, and reconstructed the policy considerations that sustain their adoption.

In that sense, the comparative enquiry performed a dual task. First, it operated as a form of external validation. By mapping the range of responses adopted across jurisdictions and institutions, it tested whether an Article 11(2)-type mechanism—limited substitution without plenary institutional takeover—finds support in comparative practice, and, conversely, how far UNCITRAL-type models of plenary constitution, under which the appointing authority may revoke prior appointments and constitute the tribunal in full, have been adopted, adapted, or resisted. The aim was not to demonstrate convergence for its own sake, but to establish whether each model is anchored in a broader doctrinal and institutional context, and to assess the relative weight and distribution of that support. Secondly, the enquiry served to delimit the space of legally intelligible alternatives. By reducing institutional practice to a finite set of recurring structural models, it clarified that the choice confronting the Cairo Rules 2024 is not open-ended but confined to a small number of recognisable

configurations—of which both Cairo Article 11(2)-type completion and UNCITRAL Article 10(3)-type plenary constitution are paradigmatic.

Part II also performed a third, more discriminating, function: it enabled an assessment not merely of institutional forms, but of the underlying policy considerations that have shaped them. Judicial decisions were not treated as isolated outcomes but were mined for the reasoning that underpinned them: how courts have understood equality, how they have balanced it against party autonomy, and how they have responded to asymmetries produced by multiparty configurations. Those decisions reveal not only what courts have done, but why they have done it; they expose the policy commitments—sometimes explicit, sometimes implicit—that inform judicial approaches to tribunal constitution. In parallel, attention was directed to legislative and institutional design choices: the travaux préparatoires, where available; the structural context in which particular provisions were adopted; and the institutional imperatives—efficiency, legitimacy, administrative capacity—that appear to have motivated the adoption of one model over another. The enquiry thus extended beyond doctrinal form to institutional rationale.

In this respect, neither Article 11(2) nor Article 10(3) operates as a self-contained device; each is the juridical expression of a prior ordering of institutional priorities. Each provision encodes a choice: whether to privilege ex ante rule-based allocation or ex post institutional calibration; whether to accept asymmetry as a managed consequence of multipartism or to treat it as a condition to be corrected through intervention. The comparative exercise, properly conducted, therefore reconstructs not merely outcomes but the normative architecture that sustains them.

That enquiry bears directly upon the present design question. It enables a more informed assessment of the risks and advantages associated with each model, not in the abstract, but in light of their demonstrated operation across different legal systems, their judicial reception, and the policy considerations that have supported or constrained them. It also guards against analytical asymmetry. A reading of Article 11(2) that is internally coherent must be tested against the availability, rationale, and reception of alternative models; equally, the apparent predominance of UNCITRAL-type solutions must be assessed in light of the institutional and policy choices that underpin them, including the relocation of decision-making from rule to discretion. Part II thus ensures that neither model is assessed in isolation: each is evaluated against the other, within a shared analytical framework that is both doctrinal and explanatory.

For that reason, Part II was not ancillary to the argument of Part I; it was its necessary complement. It did not merely reinforce the interpretation advanced there; it placed it in structured comparison with its principal alternative and examined both through the combined lenses of comparative practice, judicial reasoning, and institutional design.

Read together, Parts I and II isolate the point of difficulty with some precision. The problem lies not in multiparty breakdown as such, but in the absence of a coherent and stable allocation of institutional authority in response to it. Once the analysis is

refocused on the single legally relevant trigger—the failure of joint nomination—the question becomes one of consequence rather than classification.

It is at that point that the enquiry necessarily shifts from diagnosis to design. The task is no longer to determine whether the existing Cairo Centre practice can be maintained—it cannot—but to determine whether the Rules themselves should be retained and applied according to their terms or amended so as to embody a different allocation of authority. The question is thus one of retention or revision: whether to restore alignment between text and application, or to alter the text so as to accommodate a different institutional model. The choice is therefore structural rather than incremental: it concerns the allocation of authority within the system rather than the refinement of its exercise. That is the question addressed in what follows.

II. Structure of Choice

If the analysis developed thus far is correct, the Centre is confronted with a binary at the level of principle. The question is not whether to refine the existing mechanism, but whether to preserve or displace it. The choice is therefore between two irreducible allocations of authority: retention of Article 11(2) as the governing rule of failed joint nomination, properly understood and applied, or its removal and replacement by an institution-led model of tribunal constitution grounded in Article 11(4), operating in the manner exemplified by UNCITRAL Article 10(3).

Once framed in those terms, the apparent range of reform options contracts sharply. What presents, at first sight, as a spectrum of possible adjustments resolves, on closer analysis, into a substitution between two competing institutional logics. On the one hand lies a rule-based mechanism that defines both trigger and consequence ex ante; on the other, a discretionary model in which the rule identifies the fact of failure but transfers responsibility for its resolution to the institution. There is no stable middle ground. Intermediate formulations do not escape that polarity; they merely vary the degree to which authority is relocated from rule to institution.

The structural content of that choice is exact. Retention entails that failure of joint nomination—however it manifests—is treated as a single juridical event attracting a single consequence: completion of the tribunal through a limited default appointment. Amendment, by contrast, entails the excision of Article 11(2) as the operative rule and the restoration of Article 11(4) as the default mechanism of constitution, with the consequence that failure of joint nomination is recharacterised as a failure to constitute the tribunal as such. Under that model, the Centre is no longer confined to completing the tribunal; it assumes plenary authority to constitute it, including the power to revoke prior appointments and to reconstruct the tribunal in its entirety.

That recharacterisation is decisive. It marks the transition from completion to reconstruction; from rule to judgment; from an ex ante allocation of consequence to an ex post exercise of institutional discretion. It is, in substance, a reordering of the constitution process itself.

The analytical work undertaken in Part II confirms that this is not an artefact of the Cairo Rules, but a general feature of arbitral design. Across jurisdictions and institutions, the available responses to failed joint nomination cluster around a limited number of recurring structural models. Those models differ in technique, but not in kind. They either preserve the consequences of party appointment and complete the tribunal in a confined manner, or they treat the failure as a breakdown of the constitution process and transfer responsibility to the institution to reconstruct the tribunal as a whole. The present choice is therefore not local but paradigmatic: it situates the Cairo Rules within that broader architecture.

The first option is retention of the rule. This consists in maintaining Article 11(2) and applying it according to its terms. If it is to be preserved, it must be applied without qualification. It admits of no taxonomy of failure and no differentiation of response. Silence, partial participation, competing nominations, and tactical obstruction are not distinct categories; they are manifestations of a single juridical condition. Each therefore attracts the same consequence: a limited default appointment to complete the tribunal, without recourse to plenary institutional constitution and without disturbance of existing appointments.

In structural terms, this corresponds to what Part II identified as mandatory limited substitution: a regime in which the consequence of failure is fixed in advance, the institutional role is confined, and the continuity of party appointment is preserved to the greatest extent compatible with multipartism. The model is intentionally austere. It substitutes certainty for flexibility; administrability for calibration; continuity for reconstruction. Parties who adopt it accept, as part of that allocation, the possibility of asymmetry in appointment as the price of maintaining a rule-based system of constitution. That asymmetry is not a defect of the system; it is the direct and foreseeable consequence of its design.

It follows that retention is not a defence of existing practice but its repudiation. It requires the abandonment of the intermediate taxonomy through which that practice has operated and the reinstatement of the rule in its undifferentiated form. More fundamentally, it requires adherence to the organising premise of Article 11(2): that the consequences of multipartism are to be determined in advance and applied without recourse to case-specific evaluation.

The second option is amendment. This entails a reallocation of authority from rule to institution. Its paradigmatic expression is reversion to the UNCITRAL architecture, under which every failure of joint nomination is treated as a failure to constitute the tribunal, thereby triggering plenary institutional power to constitute it in full. In that model, the institution assumes primary responsibility for tribunal formation: it may appoint, revoke, or reappoint arbitrators, and designate the presiding arbitrator, in order to produce a tribunal that it considers appropriate in the circumstances.

In the terms developed in Part II, this corresponds to mandatory institutional takeover. The rule identifies the fact of failure; it does not determine its consequences. Those consequences are supplied through institutional judgment. The operative

premise is therefore inverted. Failure is not treated as a discrete event requiring completion, but as a breakdown of the constitution process itself. The response is not substitution, but reconstruction.[3]

That model does not exhaust the field of possible formulations. Comparative practice reveals a range of intermediate configurations in which the institution is vested with a structured discretion as to how failure of joint nomination is to be characterised and addressed. In such regimes, the institution may, depending on the configuration before it, elect either to proceed by limited substitution—completing the missing appointment while preserving those already made—or to treat the situation as a failure to constitute the tribunal as such and to exercise, in whole or in part, plenary powers of constitution. The choice may turn, for example, on whether co-parties can properly be treated as a single side, or whether divergence of interests renders joint nomination structurally untenable. The institutional response may accordingly range from targeted substitution to partial or complete reconstruction of the tribunal.

These models therefore combine elements of rule-based completion and discretionary constitution. They do not operate by fixing a single consequence ex ante, but by allocating to the institution the authority to select, within a defined range, the appropriate response to the form of breakdown encountered. In that sense, they introduce not merely flexibility in outcome, but discretion at the level of characterisation itself: the institution determines whether the condition before it is to be treated as a failure requiring completion or as one requiring reconstruction.

That qualification, however, does not displace the underlying structure identified in Part II. Once authority is transferred from Article 11(2) to institutional judgment—whether in absolute or conditional form—the mechanism has crossed the relevant threshold. The distinction is no longer between forms of substitution, but between rule-governed consequence and institutionally mediated response. What varies thereafter is the intensity and scope of discretion, not the source of authority.

This point is of central importance. The proliferation of intermediate models does not expand the range of fundamentally distinct choices; it refines their expression. To the extent that such models confer upon the institution the power to determine whether, and to what extent, the tribunal is to be reconstructed, they engage, in substance, the same considerations as the UNCITRAL model—considerations that Part II has traced through judicial reasoning, legislative design, and institutional practice. Differences of calibration—whether the institution may replace one arbitrator, two, or the tribunal as

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[3] If such an amendment is to be undertaken, a further consideration arises. The present formulation of Article 11(4) departs, in my view unwisely, from its UNCITRAL counterpart in certain meaningful respects. Those have been examined critically in Part I. It follows that, if the Centre elects to move toward an institution-led model, it may be preferable to adopt a formulation more closely aligned with UNCITRAL Article 10(3), thereby avoiding the difficulties identified in relation to the Cairo variant of that provision. For the differences between Article 11(4) of the Cairo Rules 2024 and Article 10(3) of the UNCITRAL Rules (2021), and a detailed critique of the former, see Part I of the study, at note 1 above, at several places: at note 2, page 3; at note 8, page 12, and at note 13, page 17.

a whole, and on what criteria—affect operation at the margins; they do not alter the governing logic.

The choice is therefore not binary in appearance, but it remains binary in structure. It is a choice between two modes of ordering the constitution process: one in which the rule determines both trigger and consequence, and the institution completes within that framework; and one in which the rule identifies the failure but leaves its juridical character and consequences to institutional determination. Everything else is variation within, and modulation of, those forms.

III. Dimensions of Comparison

The comparison that follows proceeds by way of a set of analytical dimensions. Each dimension isolates a distinct vector along which the retention model (Article 11(2), rule-based completion) and the amendment model (UNCITRAL-type institutional constitution, reflected in Article 10(3)) may be evaluated: certainty; equality; coherence; autonomy; friction; governance; stability; enforcement; justification; legitimacy; design; strategy; familiarity; positioning; and diversity. The purpose is not to fragment the enquiry, but to discipline it. What is at stake is not a choice between isolated advantages, but between competing institutional logics; the dimensional method renders those logics visible by disaggregating the considerations that sustain them.

That said, the comparison is framed, deliberately, by reference to the limiting cases. The analysis proceeds by setting against one another the clearest expressions of the competing logics: on the one hand, a rule-based model in which failed joint nomination triggers a fixed and limited consequence; on the other, a model of plenary institutional constitution in which failure engages broad institutional authority to reconstruct the tribunal. That choice of framing is not intended to deny the existence of intermediate or hybrid models. Part II has already shown that comparative practice includes calibrated regimes that combine elements of substitution and reconstruction, or confer upon the institution a structured discretion as to which response is to be adopted. Those models remain relevant throughout. They are not ignored; they are illuminated by the contrast between the poles. The limiting cases are therefore used not because the field is exhausted by them, but because they sharpen the underlying differences in source of authority, mode of intervention, and allocation of risk. The analysis that follows should inform not only the choice between the poles, but also the design and assessment of the hybrids that lie between them.

This method is adopted for reasons of clarity and analytical integrity. The choice between retaining Article 11(2) as written and reallocating authority to an institution-led model does not turn on a single organising principle. As Part II has shown, the competing models are underpinned by different conceptions of how the consequences of multipartism are to be managed—whether through ex ante rule-based allocation or ex post institutional calibration. Those conceptions manifest across multiple planes: doctrinal (the structure of the rule); procedural (the conduct of the constitution process); institutional (the role and capacity of the Centre); behavioural (the

incentives created for parties); justificatory (the location and burden of reason-giving); legitimating (the source from which tribunal authority is understood to derive); and perceptual (the manner in which the process is received by users, institutions, and courts). To collapse these into a single axis of evaluation would obscure the structure of the choice. To separate them is to make that structure intelligible.

The dimensional approach further guards against a recurrent difficulty in this field: the tendency to treat distinct considerations as if they were interchangeable expressions of a single value, most often fairness or efficiency. Equality, for example, is not coextensive with autonomy; certainty does not exhaust legitimacy; institutional capacity is not reducible to procedural convenience; justification is not the same thing as enforcement exposure; and diversity is not exhausted by positioning or familiarity. By assigning each consideration its own analytical space, the method reduces the risk of conflation and permits arguments to be tested within the domain to which they properly belong.

At the same time, the structure is comparative rather than cumulative. Each model is examined across the same set of dimensions, not assembled as a list of advantages and disadvantages. No single dimension is determinative in the abstract; each acquires significance only in relation to the others. The method does not seek to produce a mechanical balance sheet; it seeks to expose the trade-offs inherent in each model, and to show how the prioritisation of one value entails the attenuation of another. The relative weight of those values is not fixed in advance; it depends upon the institutional posture one is prepared to adopt and the risks one is prepared to bear. That is equally true of hybrid models. Their attraction lies precisely in the attempt to redistribute those trade-offs; but they remain intelligible only against the background of the competing logics from which they are composed.

Some degree of interaction between dimensions is inevitable. Considerations such as equality, friction, governance, enforcement, and justification are not hermetically sealed; they intersect in practice and may reinforce or counteract one another. The same is true of legitimacy, positioning, familiarity, and diversity, each of which bears, in different ways, upon the reception of the institution's choice of model. That interaction is acknowledged but controlled. Each dimension is framed so as to capture its primary analytical function, while cross-references are used to indicate points of connection rather than to duplicate analysis. The objective is not artificial separation, but structured articulation.

What follows, therefore, is not a sequence of self-contained arguments, but a coordinated examination of a single structural choice from multiple vantage points. The ordering of the dimensions reflects that structure. The analysis begins with the internal characteristics of the mechanism—certainty; equality; coherence; autonomy; and friction—before turning to institutional capacity, temporal considerations, and exposure—governance; stability; enforcement; justification; and legitimacy—and concluding with behavioural and external factors—design; strategy; familiarity; positioning; and diversity. Taken together, these dimensions do not merely describe the models; they reconstruct them. Each model emerges, across the analysis, as a

coherent configuration of priorities rather than a collection of discrete features; and the same framework, mutatis mutandis, provides the basis for evaluating any intermediate or hybrid arrangement that lies between them.

A. Certainty

A central dimension of comparison is legal certainty. That concept is not invoked here in the abstract, but in its most operationally sensitive setting: the constitution of the tribunal. It is at that juncture that procedural authority crystallises and the adjudicative structure is fixed. The question is therefore precise. It is whether the consequence of a defined contingency—failure of joint nomination—is determined in advance by rule, or is left to be supplied, once that contingency arises, through evaluative judgment. The distinction is not terminological but architectural: it concerns the location of determinacy within the system, and thus whether certainty is embedded in the rule itself or deferred to the process by which the rule is applied.

Under the retention model, certainty is structural, immediate, and anterior to dispute. Article 11(2), taken on its own terms, prescribes both the condition and its consequence. Where joint nomination fails, the response is fixed: the Centre completes the missing appointment; existing appointments remain undisturbed. There is no residual space for enquiry into alignment of interests, no occasion for recharacterisation of the failure, and no scope for recalibration of the tribunal as constituted. The rule is exhaustive of the consequence. It operates not as a standard to be applied, but as a directive whose content is spent in advance of its invocation.

That determinacy is not merely formal. It has practical purchase at the level at which arbitration is chosen and structured. Arbitration is selected, in part, for the predictability of its process as well as its outcome. Parties commit capital, structure transactions, and distribute risk on the assumption that the mechanism by which disputes are to be resolved is itself stable and knowable. A rule that fixes, in advance, the consequence of a known contingency secures that assumption at the precise point at which it is otherwise most vulnerable. It removes from the constitution stage the possibility of an antecedent contest over process, and thereby preserves the primacy of the dispute itself.

The value of that stability is commercial as much as juridical. It is reflected in pricing, in contractual allocation of risk, and in the willingness of parties to accept arbitration in complex, multiparty arrangements. In such settings—construction, energy, finance, and corporate structures—plurality of parties is the norm, divergence of interests is common, and coordination may fail. Parties do not require assurance that such failure will not occur; they require clarity as to what will follow when it does. Article 11(2) supplies that clarity. It enables risk to be assessed ex ante, allocated with precision, and absorbed within the structure of the transaction. The alternative is an open-textured response, dependent upon discretionary evaluation, submissions, and context-sensitive judgment. That alternative carries cost: delay, uncertainty, and difficulty in ex ante assessment.

Certainty also performs a coordinating function within the constitution process itself. Where the consequence of failure is fixed and known, the scope for strategic behaviour is correspondingly reduced. The rule narrows the field within which parties may engage in tactical withholding, brinkmanship, or the manufacture of disagreement designed to provoke institutional intervention. It aligns expectations at the point of breakdown and deprives such tactics of their principal utility: the possibility of altering the constitution of the tribunal through procedural manoeuvre.

It further enhances the quality of legal advice at the contracting stage. Where the consequence of a defined contingency is clear, counsel may advise not in probabilities but in outcomes. That clarity anchors drafting, informs negotiation, and permits parties to make deliberate choices as to whether to adhere to, or depart from, the default regime. The rule thereby contributes to informed decision-making at a stage anterior to any dispute, and independent of any subsequent behavioural incentives.

Finally, certainty in this sense accords with a basic expectation of a rule-governed system: that rules will be applied as written. Parties who select institutional arbitration do so on the footing that the applicable rules will operate in a predictable manner. A provision that produces a clear and automatic consequence in a defined circumstance meets that expectation and reinforces the legitimacy of the process as one governed by rule rather than by ad hoc reconstruction.

Under the reversion model, certainty is configured differently. The rule does not determine, in advance, the content of the response to failure; it determines only that intervention will occur. The content of that intervention is supplied by the institution in the circumstances of the case. Certainty thus shifts from outcome to framework: parties may know that the institution will act, but not how it will constitute the tribunal. That distinction is not incidental. It relocates indeterminacy to the very point at which the tribunal is formed.

That indeterminacy is not a by-product of discretion in the abstract; it is inherent in the function that the institution is required to perform. The institution must give operative content to equality in circumstances that cannot be exhaustively specified in advance. It must determine whether equality is to be understood formally or functionally; whether it is to be assessed by reference to the contractual allocation of rights or to the alignment of interests as they emerge; and how those considerations bear upon the preservation, modification, or displacement of existing appointments. These are evaluative judgments of a kind that resist ex ante codification. They depend upon the particular configuration presented, and upon information that is necessarily partial at the point of decision.

The consequence is that tribunal constitution becomes contingent upon a sequence of context-sensitive determinations, each of which may admit of more than one defensible resolution. Certainty, in the sense of a predetermined outcome, is replaced by a structured but indeterminate process. The rule guarantees intervention; it does not predetermine its content.

The comparison is therefore structural. Retention embeds certainty in the rule and fixes the outcome in advance; reversion embeds certainty in the fact of intervention but leaves its content to institutional judgment. The former secures predictability through ex ante allocation and accepts, as its corollary, the possibility of formal asymmetry. The latter secures adaptability through ex post evaluation and accepts, as its corollary, indeterminacy at the point of constitution. Each represents a coherent ordering of priorities: certainty of result, on the one hand; flexibility of response, on the other.

B. Equality

A further dimension of comparison is equality as it bears upon tribunal constitution. The enquiry is not whether equality is engaged—on any view, it is—but how, and at what point, it is given operative effect once the agreed mechanism of appointment has failed. The divergence between the models lies not in their recognition of equality as a value, but in the manner of its juridical organisation: whether equality is embedded within the structure of the rule itself or entrusted to institutional judgment at the point of intervention. The question is thus one of institutional location: is equality pre-allocated by design, or constructed through decision?

Under a reversion model grounded in Article 11(4), equality assumes the character of an operative standard. The rule mandates intervention; it does not determine how equality is to be realised in the circumstances of the case. That task falls to the institution. In constituting the tribunal, the Centre must determine whether existing appointments are to be preserved or displaced; whether co-parties may properly be treated as a single side; and how the resulting composition is to reflect an acceptable balance between the parties. The rule therefore operates as a gateway rather than as a determinant: it triggers the enquiry into equality but does not resolve it. Its content is supplied through the exercise of judgment.

It is at that juncture that competing conceptions of equality come into view. Equality may be understood formally, as symmetry in appointment rights and numerical outcomes; or functionally, as a question of whether the tribunal, viewed in its procedural and substantive context, reflects a fair balance between the parties' interests. Even within a functional conception, a further distinction arises: whether equality is to be assessed by reference to the contractual allocation of rights at the time of agreement, or by reference to the configuration of interests as it emerges in the dispute. These conceptions are not congruent. Formal symmetry may coexist with substantive divergence; functional balance may require departure from the contractual scheme. The choice between them is not dictated by the rule; it is made by the institution.

The consequence is that equality operates, under the reversion model, as a context-sensitive and evaluative standard. The institution is required to move beyond formal structure and engage with the realities of alignment, divergence, and representation. That enquiry is inherently indeterminate. Alignment is rarely binary; interests may overlap in part, diverge in part, and evolve over time. The institutional response must

therefore be fashioned under conditions of incomplete information and shifting positions. Under-intervention may be said to entrench imbalance; over-intervention may be said to efface distinctions that equality itself requires to be respected. The institution is thus positioned between competing accounts of what equality demands, none of which is conclusively fixed in advance.

This evaluative character has procedural and systemic consequences. Equality, in this setting, becomes a matter for argument. Parties are incentivised to advance competing narratives of alignment and fairness in order to influence the composition of the tribunal. The constitution stage, which might otherwise be administrative in character, acquires a contentious dimension. It becomes a preliminary site of dispute, conducted at a moment when positions are not yet fully formed and the evidentiary basis is incomplete.

At the same time, the institution's determinations as to equality do not occur in isolation. In a number of jurisdictions, equality in tribunal constitution is treated as an aspect of procedural public policy. The exercise of institutional discretion may therefore be subject to judicial scrutiny, not only as to whether intervention occurred, but as to whether equality was properly implemented. The standard is thus both operative and reviewable. The divergence between formal symmetry and functional balance may itself furnish a ground of challenge, thereby extending the contest over equality beyond the institution and into the courts.

Under a retention model grounded in Article 11(2), equality is configured differently. The rule does not require the institution to determine, in the circumstances of the case, what equality demands. It determines, in advance, the consequence of failure and confines the institution to completing the missing appointment. The institution applies the rule; it does not supply its content. Equality is not adjudicated; it is presupposed.

In this model, equality is anchored in the contractual and normative structure of the rule itself. The relevant enquiry is not whether the resulting tribunal achieves a substantively balanced configuration when viewed against the unfolding dispute, but whether the rule governing appointment has been applied uniformly. Parties are treated alike in that they are subject to the same requirement of joint nomination and the same consequence in the event of failure. Equality is thus realised through sameness of treatment rather than sameness of outcome. It is constitutionalised at the level of rule design rather than operationalised through case-specific calibration.

The consequence is that equality does not become a site of contestation at the constitution stage. The institution is not required to assess alignment, to weigh competing accounts of fairness, or to justify the configuration of the tribunal in light of the dispute as it has emerged. The divergence between formal and functional equality is resolved ex ante, through the choice of rule, rather than ex post, through the exercise of discretion. The resulting tribunal may exhibit asymmetry when viewed against the parties' positions in the dispute; but that asymmetry is the direct and

foreseeable consequence of a rule that allocates responsibility in advance and applies without differentiation.

The contrast between the models is therefore structural. It does not lie in the presence or absence of equality, but in its juridical form. Under the reversion model, equality operates as a standard: it is articulated, contested, and implemented through discretionary judgment at the point of constitution. Under the retention model, equality operates as a premise: it is embedded in the rule, realised through its uniform application, and insulated from case-specific re-evaluation. The former situates equality within the process of decision; the latter within the architecture of the system.

C. Coherence

A further dimension of comparison is systemic coherence. The enquiry is not whether a particular provision can be defended in isolation, but whether it is sustained by, and integrated within, the wider architecture of the Rules. The question is therefore not one of textual compatibility but of institutional logic: whether the mechanism of tribunal constitution reflects a premise that is repeated across the system, or whether it introduces a countervailing principle that must be accommodated, managed, or contained. Coherence, in this sense, is not the absence of tension, but the presence of a governing idea that organises the Rules as a whole.

Under the retention model, coherence is internal, cumulative, and demonstrable across the structure of the 2024 Rules. Article 11(2) does not operate as an isolated solution to a local difficulty. It forms part of a broader and repeated institutional posture toward multipartism—one that is neither implicit nor episodic but expressed across multiple provisions introduced within the same legislative moment. That posture rests upon a single organising premise: that asymmetry of participation, including asymmetry in appointment influence, is a tolerable and, in certain circumstances, necessary consequence of multiparty procedure.

Multipartism, as conceived by the Rules, is not treated as an aberration from a bilateral norm: it is treated as a structural condition that may arise at different stages of the proceedings—at inception, through joinder, through consolidation, or through the aggregation of claims—and that must be accommodated within a stable procedural framework. The Rules do not respond to each manifestation by reasserting symmetry; they respond, in the main, by preserving continuity and absorbing asymmetry where required. The techniques vary; the underlying logic does not.

That logic is visible with particular clarity in the joinder regime.[4] A third party may be joined after the constitution of the tribunal, including in circumstances in which that

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[4] Article 17(5) reads: "The arbitral tribunal may, at the request of any party, allow one or more third persons to be joined in the arbitration as a party provided such person is a party to the arbitration agreement, unless the arbitral tribunal finds, after giving all parties, including the person or persons to be joined, the opportunity to be heard, that joinder should not be permitted because of prejudice to any of those parties. Where a joinder is allowed, the constitution of the arbitral tribunal shall not be affected. The arbitral tribunal may make a single award or several awards in respect of all parties so involved in the arbitration."

party has had no role in its appointment. The tribunal remains as constituted. The joined party is required to submit to an adjudicative body in whose formation it did not participate. That outcome is not treated as anomalous or presumptively unfair; it is an intended consequence of the design. It reflects a deliberate prioritisation of procedural continuity and efficiency over strict symmetry of appointment influence.

The position under consolidation is more qualified.[5] The default position is continuity: consolidation into the arbitration first commenced, with the tribunal constituted in that proceeding continuing to act. The effect is that parties to later proceedings may be bound to a tribunal whose composition they did not influence. In that respect, consolidation aligns with the same underlying tolerance of asymmetry. However, Article 50 does not treat that consequence as exhaustive. It preserves, in express terms, a power of institutional intervention, including the revocation of prior appointments and the reconstitution of the tribunal where the circumstances so require. Consolidation therefore does not speak in a single register. It reflects a dual structure: continuity as default; plenary intervention as reserve.

The inference must accordingly be stated with care. Across joinder and consolidation, the Rules do not articulate a uniform and exclusive commitment to either continuity or recalibration. They establish a hierarchy. Continuity, with its attendant asymmetry, is the organising baseline; plenary intervention remains available, but as an exceptional or discretionary response rather than the governing rule. Asymmetry is therefore not treated as a defect requiring systematic correction, but as a condition that may, in appropriate cases, be absorbed rather than undone.

Read against that background, Article 11(2) assumes a more precise place within the architecture. It does not stand in simple parallel with consolidation, nor in opposition to it. It gives determinate effect, at the point of initial constitution, to the same baseline that governs elsewhere: that failure of coordination does not, of itself, necessitate reconstruction. The tribunal is completed, not reconstituted; continuity is preserved; asymmetry is accepted as the price of a rule-based mechanism. In that respect, Article 11(2) is fully congruent with the joinder regime and with the default logic of consolidation, even if consolidation, unlike Article 11(2), retains an express safety valve of plenary intervention.

That reading is reinforced by considerations of timing and legislative context. Articles 11(2), 17(5), and 50 were all introduced in the 2024 revision. That simultaneity is not incidental: it reflects a single exercise of institutional design directed to a common problem. These provisions are not the product of incremental accretion; they are components of a coordinated reform. Each addresses a different manifestation of

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[5] Article 50 provides (in relevant part): "1. A party may file a request to the Centre to consolidate two or more arbitrations pending under the Rules into a single arbitration. ... 8. Where the Centre decides to consolidate two or more arbitrations, the arbitrations shall be consolidated into the arbitration that is deemed by the Centre to have commenced first according to the Rules, unless otherwise agreed by all parties or the Centre decides otherwise taking into consideration the circumstances of the case. The Centre shall communicate such decision to all parties and to any appointed arbitrators in all arbitrations and shall revoke the appointment of the arbitrators in the arbitration(s) that shall not proceed...."

multipartism, but they do so through a common structural approach: continuity as default, intervention as residual.

On that footing, Article 11(2) cannot plausibly be treated as an outlier or as a reluctant exception within an otherwise symmetry-driven system. Nor, however, can consolidation be read as unambiguously confirming a single organising premise to the exclusion of its alternative. The architecture is more nuanced. It is ordered, but not monolithic. It privileges continuity, but does not exclude recalibration. Article 11(2) sits squarely within that ordering: it gives decisive expression to the default logic at the point of constitution, while leaving no room, within its own field of operation, for the discretionary override that consolidation preserves.

Under the reversion model, coherence assumes a different, and more contingent, form. A shift to plenary institutional constitution as the governing response to failed joint nomination would not simply modify the technique of appointment; it would elevate the residual logic of consolidation into a primary rule. The exceptional would become the default. The constitution stage would then be governed by a principle of recalibration through institutional judgment, rather than by completion through rule.

That move does not render the system incoherent. It does, however, alter its internal ordering. The Rules would no longer operate on a hierarchy in which continuity predominates and intervention is exceptional. They would instead operate on a differentiated basis: continuity in some contexts; systematic recalibration in another. Coherence would no longer be secured through a repeated baseline, but through the managed coexistence of distinct logics.

The burden of coherence would accordingly shift. Under the retention model, coherence is embedded in the architecture: the same organising premise recurs across provisions, and Article 11(2) gives it determinate effect. Under the reversion model, coherence is mediated through discretion: it depends upon how the institution calibrates its intervention in practice so as to reconcile the constitution stage with the surrounding framework.

The comparison may therefore be stated with greater precision. Retention aligns tribunal constitution with the dominant baseline of the Rules—continuity first, asymmetry tolerated, intervention exceptional—thereby securing coherence through repetition of principle. Reversion elevates the residual logic of plenary intervention into a governing rule at the point of constitution, thereby requiring coherence to be maintained through the disciplined exercise of institutional judgment rather than through the architecture itself.

D. Autonomy

Another dimension of comparison is party autonomy, considered not in its primary form—as expressed through the parties' agreed mechanism of appointment—but in its residual form: what remains of it once that mechanism has failed and institutional intervention is engaged. The enquiry is therefore not whether autonomy exists in principle, but how it survives under conditions of breakdown: in what juridical form,

to what extent, and through what channels. The issue is one of structure. It concerns whether autonomy persists as a right secured by rule, or is reconstituted, if at all, through participation in an institutional process.

Under the retention model grounded in Article 11(2), residual autonomy is structured, bounded, and antecedent to institutional discretion. The rule defines both the condition of failure and its consequence: the Centre is to complete the missing appointment, leaving existing appointments undisturbed. That consequence is fixed. The institution is not invited to revisit the composition of the tribunal as a whole, nor to recalibrate it by reference to alignment, fairness, or case-specific considerations. The function of the Centre is executory, not evaluative.

That constraint does not, however, eliminate all scope for party participation. It leaves open the manner in which the rule is to be implemented. Within that confined space, a limited but real form of residual autonomy may subsist. A structured list procedure directed to the defaulting co-parties illustrates the point. The Centre may circulate a short list of candidates, invite rankings or objections within a defined period, and proceed accordingly. If agreement is reached, the appointment follows; if it is not, the Centre appoints from the list. This is not a reintroduction of discretion at the level of outcome. It is a controlled mode of execution that preserves the integrity of the rule while affording the parties a final, disciplined opportunity to participate in its application.

That opportunity is not merely formal. It may operate as a catalyst for coordination. Faced with a finite set of candidates—none of whom may be ideal, and all of whom carry the possibility of unilateral selection—the defaulting parties may be induced to reach agreement where previously they did not. Residual autonomy, in this setting, is not restored in its original form; it is channelled, constrained, and rendered operative within defined limits.

Nor is that the only locus at which autonomy may persist. It may subsist, and often does, in relation to the selection of the presiding arbitrator. Where the chair is to be appointed by the co-arbitrators, party influence continues indirectly, through the arbitrators whom the parties have appointed or whose appointment they have influenced. Where the chair is to be agreed by the parties, autonomy survives directly, through negotiation across the two sides. In either case, the retention model preserves a meaningful space—both direct and indirect—for party influence over the ultimate composition of the tribunal, notwithstanding the initial failure of joint nomination.

The position under a reversion model grounded in Article 11(4) is different in form, though not devoid of comparable practical effects. Once that provision is engaged, the Centre assumes responsibility for constituting the tribunal as a whole. It may revoke prior appointments; it may appoint or reappoint each arbitrator; and it designates the presiding arbitrator. The operative logic is institutional. The constitution of the tribunal is no longer the result of a rule applied to a defined contingency, but of a process conducted under institutional control.

Within that framework, the extent to which autonomy survives depends upon the manner in which that process is structured. The more deliberate, transparent, and participatory the process, the greater the scope for meaningful party involvement. The Centre may invite submissions, circulate shortlists, sequence decisions, and solicit preferences. Such techniques do not alter the juridical character of the mechanism—the institution remains the appointing authority—but they shape the extent to which party influence may be exercised within it.

In practice, such processes may do more than accommodate participation. They may recreate, within an institutional framework, the conditions for agreement. Confronted with a constrained set of candidates, and with the knowledge that the ultimate choice will otherwise be made by the institution, parties may converge upon a mutually acceptable nominee. What begins as institutional constitution may, through the discipline of the process, generate a renewed exercise of autonomy.

It would not ordinarily be inconsistent with the institutional mandate to give effect to such agreement, provided it emerges within, and is controlled by, the process established by the Centre. The purpose of the rule is to secure the constitution of the tribunal, not to displace agreement for its own sake. Where agreement reappears within a structured institutional framework, it may properly be treated as fulfilling, rather than frustrating, that purpose.

The comparison must therefore be stated with precision. Under the retention model, residual autonomy is embedded within the rule. It is limited in scope, but it operates as of right within defined parameters. Under the reversion model, participation is mediated through institutional control. It is not guaranteed in advance; it is contingent upon the process adopted by the institution. Yet where that process is carefully designed, the practical space for party influence—and even for renewed agreement—may be substantial.

The difference is not whether autonomy survives, but how it is juridically constituted. In the retention model, autonomy is preserved through rule; in the reversion model, it is reconstructed through process. That distinction is not merely descriptive. It goes to the manner in which each model understands the role of the parties once the original mechanism of appointment has broken down: whether they remain participants within a rule-governed framework, or become contributors to an outcome shaped, in the final analysis, by institutional judgment.

E. Friction

A further dimension of comparison is procedural friction at the point of tribunal constitution. The question is not whether disagreement may arise; in multiparty proceedings, some measure of disagreement is endemic. The question is how the governing mechanism responds once disagreement does arise: whether it contains the difficulty within a bounded procedural pathway or converts it into a wider contest over the composition of the tribunal itself. Friction, in this sense, is not confined to delay. It includes the generation of satellite dispute, the expansion of procedural argument,

the consumption of institutional resources, and the transformation of what ought to be a preliminary step into a contested adjudicative episode.

Under the retention model, friction is reduced by design. Article 11(2), properly applied, removes a defined class of multiparty deadlock from the field of discretionary intervention. It does so in the simplest possible way: by identifying the condition of failure and attaching to it a single, limited consequence. Once joint nomination has failed, the Centre is to complete the missing appointment. The matter is not escalated into a wider enquiry as to the status of the tribunal, the adequacy of representation, or the balance of interests between co-parties. The deadlock is not redescribed as a generalised breakdown of constitution: it is met by a confined and predetermined response.

That structural choice has immediate practical consequences. It narrows the Centre's role to execution rather than evaluation. Article 11(2) does not require the Centre to classify the quality of the failure, to assess the alignment of the parties, or to decide whether prior appointments should stand. It does not invite submissions on fairness, representation, or symmetry. It directs a single act. The response is mandatory; the scope of the task is limited; the path from failure to completion is linear. The constitution process remains procedural in character, rather than becoming deliberative or quasi-adjudicative.

The significance of that narrowing is best understood by reference to what it excludes. Once the institution is relieved of the need to inquire into alignment, divergence of interests, sufficiency of representation, or the propriety of leaving existing appointments in place, an entire field of contestable questions is taken off the table. Those questions are not merely difficult; they are productive of further procedure. They invite submissions and counter-submissions, encourage tactical positioning, and enlarge the terrain of dispute before the tribunal has even been formed. A rule that forecloses them does more than save time: it prevents the constitution phase from becoming an additional theatre of litigation.

Retention therefore contains friction not by eliminating disagreement, but by denying disagreement procedural room to expand. The process becomes shorter, more predictable, and less adversarial. The incidence of satellite dispute diminishes. The point is not simply that fewer issues are argued: it is that fewer issues are available for argument in the first place. What might otherwise become an institutional controversy is converted into a bounded act of completion.

That has a further relational consequence. Where the Centre acts pursuant to a defined rule, the scope for contestation between institution and parties correspondingly contracts. The institution is not called upon to justify a balance struck between competing conceptions of fairness. Its role is not to adjudicate between rival narratives of alignment. The interaction remains administrative in the proper sense: procedural rather than evaluative; directive rather than reason-giving. The temperature is lowered at precisely the stage at which procedural stability is most needed.

The overall effect is cumulative. Fewer points of friction mean fewer opportunities for delay; fewer opportunities for delay mean fewer occasions for escalation; and fewer occasions for escalation mean a constitution phase that resumes its proper function as a preliminary and facilitative step rather than becoming itself a subject of contested process. The retention model does not merely reduce friction incidentally: it is friction-suppressing in structure.

Under the reversion model, the position is different in kind. Friction is not merely a possible by-product of the mechanism; it is built into it. Once failed joint nomination is treated, not as a condition requiring completion, but as a failure of constitution engaging plenary institutional powers, the constitution phase is necessarily reopened to evaluative judgment. The institution must decide not simply that intervention is required, but what form it is to take: whether existing appointments are to be displaced; whether co-parties may properly be treated as a single side; whether equality is to be pursued through preservation, modification, or reconstruction; and whether the tribunal is to be reconstituted in part or in whole. The process is thereby transformed from execution to assessment.

It is that shift that generates friction. These are not mechanical questions. They are inherently contestable, because they depend on judgments about alignment, fairness, representation, and the practical significance of asymmetry. Once such questions are opened, parties have every incentive to argue them. The constitution phase becomes a site for competing submissions on the nature of the parties' interests, the meaning of equality, and the legitimacy of leaving prior appointments undisturbed. Procedural activity correspondingly expands: submissions, replies, requests for reconsideration, attempts to frame the issue in favourable terms, and efforts to influence the institutional choice.

The process thus becomes iterative rather than linear, deliberative rather than automatic. Friction is no longer incidental to the operation of the model: it is a direct consequence of the fact that the model relies upon institutional judgment to determine both the character of the failure and the content of the response. The more power the institution has to shape the tribunal, the more argument there is as to how that power should be used.

The relational consequences follow. Where the institution is required to evaluate and decide, it necessarily occupies a more adjudicative posture vis-à-vis the parties. Its reasoning may be scrutinised; its choices may be criticised; dissatisfaction may be framed, not merely as disappointment with an outcome, but as objection to the adequacy of the process by which the outcome was reached. The interaction is no longer confined to the implementation of a rule. It becomes an engagement over judgment. That is a different institutional posture, and a more friction-generating one.

There is, however, a qualification of some importance: a well-designed and carefully managed institutional process may, in certain cases, channel disagreement rather than merely inflame it. Staged procedures, controlled timetables, requests for focused submissions, and the circulation of candidate lists may impose order upon the contest

and, in some configurations, encourage belated agreement. Parties faced with a constrained set of institutional options may converge where they would not have done so unaided. Friction may thus be absorbed, structured, and in part redirected toward coordination.

But that qualification does not alter the basic architecture. Even where the process is managed with discipline and succeeds in producing convergence, the mechanism remains evaluative. It remains contestable. It remains dependent upon institutional judgment both as to characterisation and response. The possibility of convergence exists within, not in place of, a structure that invites argument. Friction may be moderated; it is not displaced.

The comparison is therefore structural. Retention contains friction by removing a defined class of disputes from the field of discretionary intervention and substituting a rule-based mechanism of completion. Reversion introduces friction by making that same field the subject of institutional assessment and party argument, albeit with some capacity, if carefully managed, to discipline and channel the resulting contestation. The former limits the occasions for procedural conflict; the latter incorporates such conflict into the constitution process itself.

F. Governance

A further dimension of comparison is governance. The enquiry is not confined to doctrine; it is organisational in character. It concerns the relationship between the model of tribunal constitution and the institutional form required to administer it in a manner that is consistent, credible, and sustainable at scale. The question is therefore twofold: what kind of decision-making structure does each model presuppose, and to what extent does that structure align with the Centre's actual architecture? Governance, in this sense, is not an external constraint upon the Rules; it is the condition under which their internal logic can be realised in practice.

Under the retention model, the governance burden is deliberately contained. Article 11(2), applied according to its terms, assigns the Centre a confined and rule-bound function: the completion of the missing appointment. The institution is not required to reconstitute the tribunal, to adjudicate upon competing accounts of alignment, or to calibrate equality in light of evolving factual configurations. It is not asked to revisit existing appointments or to justify their preservation. The task is limited in scope, linear in execution, and defined in advance.

That limitation has immediate institutional consequences. A rule-based mechanism of this kind reduces the demand for sustained deliberation. It does not require the accumulation of case-specific reasoning, the maintenance of a continuous decision-making body, or the development of an internal jurisprudence capable of guiding future determinations. The function may be discharged through supervisory or committee-based structures operating at defined points, without the need for permanent or quasi-judicial engagement. Consistency is secured not by repeated acts of judgment, but by fidelity to the rule.

This is not merely a matter of administrative convenience. It is a mode of governance. Where the operative consequence is fixed ex ante, much of the institutional work is performed upstream, at the level of rule design. The institution is relieved of the need to recreate, in each case, the balance that the rule has already struck. The result is an economy of governance: fewer occasions for escalation, reduced internal deliberative load, and a narrower field within which inconsistency may arise.

The alignment with institutional form is therefore close. A rule-bound model is well suited to institutions that do not operate as continuously sitting adjudicative bodies, but rather through episodic intervention, structured oversight, and administrative coordination. Such institutions are not deficient; they are differently constituted. Their strength lies in the disciplined use of rules to minimise the occasions on which intensive judgment must be exercised. Retention reflects and reinforces that form of institutional organisation.

Under the reversion model, the governance profile is materially different. Once the institution assumes responsibility for constituting the tribunal as a whole, the centre of gravity shifts from rule application to decision-making. The institution must determine not only that intervention is required, but how it is to be effected. It must decide whether prior appointments are to be preserved or displaced; whether co-parties may properly be treated as a single side; how equality is to be understood in the circumstances; and how the tribunal is to be composed in light of those determinations. These are not questions of execution; they are questions of judgment.

That shift carries with it a different set of institutional demands. A model that depends upon routine, context-sensitive evaluation presupposes a governance structure capable of sustaining it. It requires repeated deliberation, continuity of reasoning, the capacity to absorb and assess submissions, and the ability to produce decisions that are not only defensible in the individual case but consistent across a series of factually distinct cases. In functional terms, it calls for a more court-like institutional form: one that is either continuously engaged or capable of frequent and disciplined reconstitution.

Where such structures exist, the burden may be absorbed. Indeed, for institutions that conceive of their role as one of active supervision and discretionary control, the reversion model may align naturally with institutional self-understanding. But where decisional capacity is episodic rather than continuous or must be assembled on a case-by-case basis, the routine exercise of that level of discretion carries identifiable costs. These include delay in decision-making, concentration of administrative effort, increased reliance on ad hoc deliberation, and a heightened risk—whether real or perceived—of inconsistency across cases. The model does not fail; but it places greater strain upon the institutional form within which it operates.

The distinction is not one of possibility, but of posture. Retention proceeds on the premise that institutional authority is best exercised through rule-based discipline and limited intervention. Reversion proceeds on the premise that the institution can, and should, assume a more active role in resolving the consequences of failed coordination

through discretionary judgment. Each model therefore embeds a different conception of the institution.

That divergence bears directly upon legitimacy. An institution that equips itself with broad constitutive powers invites users to expect that those powers will be exercised with consistency, transparency, and reasoned coherence. The wider the discretion, the greater the demand for visible decisional competence and institutional continuity. Conversely, an institution that confines its role through rule design locates its legitimacy in predictability, clarity, and faithful implementation. In the former, legitimacy is performance-based; in the latter, it is design-based.

Nor is governance solely an internal matter. Institutional form conditions external perception. A discretionary model may inspire confidence where users assume the existence of a robust internal structure capable of managing complexity and producing consistent outcomes. The same model may invite concern where such capacity is less entrenched or less visible. Conversely, a rule-bound model may appear austere to some, but to others it signals discipline, restraint, and administrative realism. Governance thus mediates reception: it shapes how the Rules are understood as much as how they are applied.

The comparison may therefore be stated in structural terms. Retention economises on governance. It aligns with an institutional form characterised by bounded authority, reduced deliberative burden, and reliance upon ex ante rule design. Reversion intensifies the governance function. It aligns with an institutional form characterised by active supervision, sustained evaluative capacity, and repeated case-specific judgment. The question is not which model is superior in the abstract, but which is congruent with the institutional architecture within which it is to operate, and capable of being carried into effect without distortion or strain.

G. Stability

A further dimension of comparison is stability, understood not as inertia but as the manner in which an institution maintains coherence over time. The enquiry is not confined to whether change occurs. It is directed to how change is effected: whether through internal realignment of practice or through formal revision of the Rules themselves. The contrast is therefore between two distinct modes of institutional response—interpretive consolidation on the one hand, legislative recalibration on the other—and the consequences each entails for continuity, governance, and transitional clarity.

Under the retention model, the premise is that the difficulty is not located in the text of Article 11(2), but in the superstructure that has been built upon it. The taxonomy of failed joint nomination—distinguishing between silence, partial participation, and competing nominations—is not anchored in the language of the provision, nor supported by its structure; it is an accretion of practice. The corrective required is therefore not amendment, but removal: the stripping away of that taxonomy and the

reassertion of the rule in its undifferentiated form. Article 11(2) applies wherever joint nomination fails within Article 11(1), irrespective of how that failure presents itself.

That correction may be effected internally. It does not require reopening the Rules. A practice note, or equivalent institutional clarification, would suffice: limited in scope, precise in articulation, and authoritative in effect. Its operation would be immediate. Practice would be brought into alignment with text; the governing logic would be unified; the inconsistency would be eliminated at source. The intervention is interpretive rather than legislative. It restores coherence without altering the normative framework within which that coherence is expressed.

The governance implications of that approach are significant. The 2024 Rules are recent. They represent a deliberate exercise of institutional design. To give effect to them according to their terms affirms the integrity of that exercise. It conveys continuity rather than revision, discipline rather than reaction. Stability, in this setting, is not resistance to change; it is the faithful implementation of a design already adopted. The institution is seen to maintain its framework rather than to reopen it.

The reversion model proceeds on a different footing. It cannot be realised through interpretation alone. It requires the displacement—whether by amendment or repeal—of Article 11(2), and with it a visible reconfiguration of the Rules at a central point of tribunal constitution. Given the proximity of the 2024 revision, such a step would amount to a prompt reconsideration of a recently settled design choice.

That carries transitional consequences. A formal amendment necessarily raises questions as to temporal application: whether it applies only to arbitrations commenced after its adoption; whether it bears upon proceedings already underway; whether parties may invoke reliance upon the prior regime. These questions are not insuperable, but they are inherent in legislative change. They introduce a layer of threshold complexity at precisely the point at which the system seeks to present clarity and procedural certainty.

The governance implications extend beyond transition. Rulebooks are generally understood to embody considered and stable policy choices. To revisit them shortly after promulgation may be read as indicating that those choices were insufficiently thought through. The signal conveyed is not merely that change is possible, but that the framework remains open to near-term revision. Even where the substantive case for amendment is strong, the timing and visibility of the change may affect how the institution's decisional process is perceived.

There is, in addition, a reputational dimension. Tribunal constitution lies at the core of arbitral legitimacy. Alteration of the governing rules in close temporal proximity to their adoption may invite heightened scrutiny, not only of the revised provision, but of the institutional process that produced both the original rule and its subsequent modification. A reform directed to reducing uncertainty may, in the short term, foreground the very question of stability that it seeks to resolve.

That said, formal revision is not, in itself, a sign of weakness. Institutions may properly revisit recent provisions where experience discloses a structural misalignment. A carefully framed amendment, supported by clear transitional arrangements and a reasoned explanation, may itself demonstrate institutional seriousness and responsiveness. Stability is not an end in itself if it requires the preservation of a mechanism that is no longer considered fit for purpose.

The comparison is therefore not between stability and instability, but between different modalities of maintaining coherence over time. Retention operates through consolidation. It aligns practice with text, preserves the existing architecture, and secures continuity without reopening the Rules. Reversion operates through recalibration. It revises the framework, accepts the transitional and signalling consequences of doing so, and substitutes one model for another considered preferable. The former maintains coherence by reinforcing what has been enacted; the latter seeks coherence by reconstituting the terms of enactment.

Each approach reflects a distinct institutional posture. Retention emphasises continuity, internal correction, and the authority of the existing text. Reversion emphasises adaptability, formal adjustment, and the willingness to revisit recent design choices. The question is not which posture is intrinsically superior, but which better accords with the institution's conception of its own framework, and with the balance it seeks to strike between stability, responsiveness, and the costs of transition.

H. Enforcement

A further dimension of comparison is exposure at the stage of judicial review, annulment, recognition, and enforcement. The question is not whether scrutiny arises—under either model it will—but what is placed before the reviewing court, and how institutional accountability is thereby engaged. The distinction is structural. It concerns whether vulnerability attaches primarily to the rule and its effects, or to the institution's exercise of judgment in the individual case; in other words, whether exposure is concentrated at the level of design or distributed across the practice of decision-making.

Under the retention model, exposure is front-loaded at the level of the rule. Article 11(2) defines, in advance, both the condition of failure and its consequence. The institution is confined to implementation. It completes the missing appointment; it does not recalibrate the tribunal, revisit prior nominations, or engage in a case-specific assessment of balance or alignment. The constitution of the tribunal proceeds by application of a rule whose content is fixed ex ante.

The immediate consequence is to narrow the field of contestation in the ordinary case. There is little institutional reasoning to impugn; little evaluative process to dissect; no sequence of discretionary choices whose adequacy may be challenged. Accountability is correspondingly mediated through the rule itself. The institution answers for fidelity to a predetermined allocation of authority, not for the quality of a case-specific determination. The locus of scrutiny is structural rather than episodic.

That containment has a corollary. Where challenge does arise, it is likely to be directed, not at the way the institution acted, but at the consequences that the rule requires. If a court considers that the asymmetry produced by Article 11(2) is incompatible with its conception of equality, the objection is to the rule's operation as such. The exposure is therefore systemic. It is capable, in principle, of attaching to every instance of application, rather than to a discrete decision. The vulnerability is concentrated, but generalisable.

Under the reversion model, the structure of exposure is inverted. The rule does not determine the outcome in advance: it transfers responsibility to the institution to constitute the tribunal, and in doing so relocates the point of vulnerability. The rule recedes as the primary object of challenge; in its place stands the institution's conduct of the constitution process. Accountability is no longer exhausted by adherence to a fixed rule; it attaches to the exercise of discretion in the particular case.

The consequence is a shift from systemic to case-specific exposure. Each exercise of the institution's constitutive power produces a record: decisions as to whether existing appointments are to be preserved or displaced; whether co-parties may properly be treated as a single side; how equality is to be understood and implemented; and how the tribunal is ultimately composed. These decisions do not flow from a closed rule. They depend upon an assessment of the configuration before the institution. It is that assessment—and the reasoning by which it is supported—that becomes the object of scrutiny.

At that point, the absence of any stable refuge becomes apparent. Once the institution is required to give effect to equality through discretionary judgment, it is exposed on both sides. A decision to preserve prior appointments may be criticised as entrenching imbalance; a decision to displace them may be criticised as excessive or unwarranted. A move toward formal symmetry may be impugned for ignoring substantive divergence; a refusal to intervene may be said to disregard the demands of equality. The institution is thus placed in a position in which any choice, however reasoned and reasonable, remains open to challenge from opposing directions.

The significance of this dynamic is cumulative. Exposure does not arise from a single feature of the model, but from the repeated necessity of making contestable judgments at the point of constitution. Each case becomes a potential site of challenge. The risk is not that the rule will be rejected in the abstract, but that individual exercises of discretion will be revisited ex post, including on the ground that the institution has either done too little or too much. Accountability becomes continuous rather than episodic.

Recent jurisprudence illustrates the form such scrutiny may take.[6] Where discretion is engaged, review is not confined to the existence of power; it extends to its exercise. Courts may examine whether the institution's analysis of party alignment was

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[6] See Part II of the study, at note 1 above, especially section II on "Case law on multiparty tribunal constitution," pages 3-16.

defensible, whether the treatment of co-parties was justified, whether the balance struck in the tribunal's composition can be sustained, and whether earlier appointments should have been preserved or displaced. The focus shifts from authority to reasoning, and from rule to application.

Analytically, these risks flow from a single structural choice: the replacement of a rule-based allocation of consequences with a discretionary, institution-led model of constitution. Reversion may reduce uncertainty at the level of text; but it does so by transferring decisional responsibility to the institution and exposing that responsibility to review through the lens of equality. The exposure lies not merely in the existence of institutional power, but in the necessity of exercising it in circumstances that admit of no uniquely correct answer.

This distinction also clarifies why neither model offers immunity from interventionist approaches to equality. In jurisdictions that adopt a demanding conception of equality, scrutiny may arise under either model. The difference lies in the point of entry. Under the retention model, the question is whether the rule's consequences are compatible with the court's understanding of equality. Under the reversion model, the question is whether the institution has properly given effect to that understanding in the particular case. In the former, the challenge is directed to the framework; in the latter, to the decision.

The comparison is therefore one of the distribution of risk. Retention concentrates exposure at the level of rule design. It reduces the frequency of challenge in individual cases but carries the possibility of a more generalised objection if the rule is rejected in principle. Reversion disperses exposure across cases. It diminishes the likelihood of a frontal attack on the rule itself but increases the occasions on which the institution's conduct may be scrutinised, including on the basis that it has under- or over-intervened. Accountability is concentrated in the one model and distributed in the other.

For an institution whose awards circulate across multiple jurisdictions, the choice is not between exposure and immunity. It is between forms of exposure: concentrated and systemic on the one hand; distributed and case-specific on the other. That distinction does not resolve the policy choice. It does, however, identify with precision the type of risk—and the mode of institutional accountability—that each model entails.

I. Justification

A further dimension concerns justification. It intersects with governance, friction, and enforcement, but it is not reducible to any of them. The present enquiry is more exacting. It is concerned with the structural location of reason-giving within the mechanism of tribunal constitution: whether justification is supplied in advance by the rule itself, or generated ex post through the institution's exercise of judgment. The distinction is not between the presence and absence of reasons, but between two different juridical sites at which reasons are produced and two different functions that they perform.

Under a rule-based model, the burden of justification is displaced upstream. The rule performs the essential normative work. It defines the condition of intervention and fixes its consequence. The institutional act is correspondingly confined: it implements what has already been determined at the level of rule design. The justification for the outcome lies, not in the decision taken in the individual case, but in the prior adoption of the rule itself.

In that sense, justification is embedded rather than generated. The rule embodies a considered allocation of competing values—certainty, administrability, tolerance of asymmetry—and it is that allocation which supplies the rationale for the outcome in every case to which the rule applies. The institution is not required to revisit that balance, to weigh competing considerations afresh, or to articulate a case-specific account of fairness. The justificatory burden is carried by the architecture of the Rules, not by the act of their application.

That relocation has procedural consequences. Where the outcome follows from a predefined rule, there is little occasion for discursive engagement at the point of constitution. The institution is not called upon to explain why one configuration was preferred over another, because no such choice is made. The process is correspondingly less exposed to contestation. There is less to argue about, and less to challenge, because the justificatory work has already been done.

This is not to say that the model is without justification. On the contrary, its justification is general rather than particular. It resides in the coherence of the rule, in the policy choices it reflects, and in the legitimacy of applying it uniformly. But that justification is not reproduced in each case. It is assumed, rather than restated.

Under an institution-led model, the structure is reversed. The rule does not supply the content of the outcome; it requires the institution to determine it. The institution must decide whether existing appointments are to be preserved or displaced; how co-parties are to be treated; and how equality is to be given effect in the circumstances. These are evaluative determinations. They cannot be implemented without reasons.

Justification therefore becomes constitutive of the mechanism. The institution must articulate the basis upon which it has acted. It must explain how it has understood alignment, how it has balanced competing considerations, and why it has adopted one course rather than another. The decision is not complete without its reasons. They form part of the operative act.

That shift alters the character of the constitution phase. It becomes discursive. Parties are invited, or compelled, to advance submissions; competing positions are formulated; and the institution responds through reasoned determination. The constitution of the tribunal ceases to be purely procedural. It acquires an adjudicative dimension.

The consequences are twofold. First, the burden of justification increases. The institution must not only decide but demonstrate the defensibility of its decision. Secondly, the space for contestation expands. Reasons invite engagement. They

provide a basis for disagreement, a focus for criticism, and, where relevant, a ground for review. The very act of explanation generates the material upon which challenge may be constructed.

A further qualification should be made. It is conceivable that an institution, even when exercising constitutive discretion, may elect not to give reasons, or to do so only in summary form. That choice does not eliminate the need for justification; it merely displaces it. The questions that would otherwise be addressed by the institution—alignment, equality, the propriety of preserving or displacing prior appointments—do not disappear. They are instead articulated by the parties in their submissions and, where the matter proceeds further, by the reviewing court.

In that setting, the absence of reasons does not reduce contestation; it may intensify it. The decision is no longer accompanied by an articulated rationale capable of framing or narrowing the dispute. The justificatory burden is redistributed rather than discharged. It falls upon the parties to reconstruct the possible bases of the decision, and upon the court to assess its defensibility without the benefit of an express institutional account.

There is, moreover, a further implication. A decision taken without reasons does not thereby become less vulnerable to review. It may become more so. Where no reasons are given, the reviewing court is left to infer the basis of the decision or to test it against conceivable grounds. The absence of an articulated rationale removes a potential anchor of deference and may widen, rather than narrow, the scope of scrutiny.

The comparison is therefore not between opacity and transparency, nor between reasoned and unreasoned decision-making in any absolute sense. Both models engage justification. The distinction lies in where justification is located and how it operates. Under the rule-based model, justification is embedded ex ante in the design of the rule and applied without re-articulation in the individual case. Under the institution-led model, justification is produced ex post through the exercise of discretion and is inseparable from the decision itself—whether articulated by the institution or reconstructed through subsequent contestation.

Each configuration carries its own advantages and costs. Embedding justification within the rule constrains contestation by limiting the occasions on which reasons must be given and defended; generating justification at the point of decision enhances the perceived legitimacy of intervention but expands the field of contestation and review. The former privileges stability and economy; the latter privileges responsiveness and visibility. The choice between them is therefore a choice as to the juridical function of reasons within the constitution process itself.

J. Legitimacy

A further dimension concerns legitimacy. It intersects with equality, autonomy, and enforcement, but it is not reducible to any of them. Each of those dimensions bears upon the acceptability of the tribunal; legitimacy addresses the deeper question of why that acceptability is thought to arise. The focus is therefore not on fairness as such, nor

on consent in isolation, nor on the availability of review, but on the juridical source from which the authority of the tribunal is understood to derive once party appointment has failed. The enquiry is one of foundation: whether legitimacy is anchored in prior allocation or constructed through subsequent intervention.

Under a rule-based model, legitimacy is anchored in fidelity to a pre-existing allocation of authority. The Rules define, in advance, both the condition of failure and its consequence. The institution acts within a confined mandate. The tribunal is constituted, not by reference to a fresh assessment of balance, but in accordance with a framework to which the parties have already assented. Authority, on this view, is mediated consent: it is traced to the parties' acceptance of the Rules, and through them, to the consequences that those Rules stipulate.

The significance of that anchoring is structural. Legitimacy does not depend upon the institution's capacity to persuade in the individual case. It does not require the tribunal's composition to be justified anew by reference to the configuration of the dispute. It rests upon adherence to a predetermined scheme that applies uniformly, irrespective of circumstance. The tribunal stands because it has been constituted as the Rules require; not because it has been recalibrated to meet a subsequent assessment of fairness or equality.

That configuration yields a particular form of stability. Legitimacy is not something to be earned in each instance; it is secured through consistency of application over time. The authority of the tribunal is insulated, to a degree, from contestation directed at the merits of its composition. The institution does not present itself as the source of the tribunal's authority; it presents itself as the vehicle through which an agreed allocation is given effect.

Under an institution-led model, the location of legitimacy shifts. Authority is no longer exhausted by prior consent as expressed through the Rules. It is supplemented—and in part constituted—by the institution's exercise of judgment. The institution intervenes to address the consequences of failed coordination. It determines whether prior appointments are to stand; how parties are to be grouped or distinguished; and how equality is to be realised in the circumstances. The tribunal that emerges is not simply the product of rule application; it is the result of an institutional act of construction.

That shift alters the structure of legitimacy. It becomes, at least in part, performance-based. The authority of the tribunal depends not only on the existence of institutional power, but on the manner in which that power is exercised. It must be articulated, whether explicitly through reasons or implicitly through process; it may be accepted or contested; and it may vary from case to case. Legitimacy is no longer secured in advance; it is produced, and exposed, in the course of decision-making.

This introduces a different dynamic. The institution assumes a more visible role in the constitution of the tribunal and, with it, a greater share of responsibility for its acceptability. The tribunal's authority is no longer insulated from scrutiny directed at its composition. It is instead linked to the persuasiveness of the process by which that

composition has been achieved. The institution does not merely implement legitimacy; it participates in its construction.

That participation carries both potential strength and corresponding vulnerability. Where institutional judgment is exercised with clarity, consistency, and discipline, it may enhance the perceived fairness and acceptability of the tribunal. Where it is contested, or appears inconsistent, it may invite challenge. Legitimacy becomes contingent, not in the sense of being arbitrary, but in the sense of being dependent upon the quality and reception of institutional decision-making.

The comparison is therefore structural. Under the retention model, legitimacy is anchored in adherence to a prior allocation of authority embodied in the Rules. It is stable, general, and insulated from case-specific reassessment. Under the reversion model, legitimacy is, in part, constructed through institutional intervention. It is responsive, particular, and exposed to evaluation in the individual case. The choice is between two conceptions of arbitral authority: one grounded in the continuity of consent expressed through rule, and one grounded in the institution's capacity to restore and articulate balance in the face of its breakdown.

Each offers a coherent account. Each locates legitimacy in a different place. And each, in doing so, exposes a different point of vulnerability: in the one, the rule itself; in the other, the decision that gives it effect.

K. Design

A further dimension of comparison concerns incentives at the point of contract formation. The enquiry is prospective rather than retrospective. Arbitration rules do not merely resolve disputes once they arise; they structure expectations in advance and thereby shape the behaviour of parties at the stage of drafting, design, and allocation of risk. The question, therefore, is how each model conditions that behaviour: whether it sharpens or attenuates the incentive to confront, and to manage, the risks inherent in multiparty appointment mechanisms before those risks crystallise in dispute. The issue is not one of freedom—which exists under both models—but of discipline: the extent to which the rules compel parties to engage with the consequences of their own design choices.

Under the retention model, the incentive structure is direct, transparent, and exacting. An Article 11(2)-type provision fixes, in advance, the consequence of failed joint nomination. The outcome is known; the institutional response is limited; the scope for ex post recalibration is removed. That clarity operates as a forward-looking signal. It requires parties to confront, at the point of contracting, the implications of adopting a joint nomination mechanism in a multiparty setting.

Article 11(1) offers a genuine election. Parties may accept the discipline of joint nomination, with its attendant coordination risk, or they may depart from it and construct an alternative mechanism adapted to the structure of their transaction. Article 11(2) gives that election practical force. Failure to agree is not absorbed through institutional reconstruction; it produces a defined and limited consequence. The effect

is to require parties to internalise, at the moment of drafting, the risks that their chosen mechanism entails.

Under the reversion model, the incentive structure is differently configured. A regime of plenary institutional constitution proceeds on the premise that, where coordination fails, the institution will assume responsibility for constituting the tribunal in full. That premise supplies a comprehensive ex post solution. It does not remove the possibility of careful drafting; but it reduces the immediacy of the need for it. The system remains operable even where the appointment mechanism has not been tailored with precision to the multiparty context.

The difference between the models along this dimension is real but should not be overstated. In both cases, the Rules—whether expressly or by implication—leave space for party autonomy at the drafting stage. Parties remain free to displace the default mechanism and to construct bespoke appointment procedures that address multiplicity directly. The existence of that freedom is common to both models; the divergence lies in the strength of the incentive to exercise it. It is at that margin that the distinction becomes material. A rule-based completion mechanism operates with a more exacting discipline. By fixing the consequences of coordination failure in advance, and by confining the institutional response, it places greater pressure on parties to anticipate and manage those risks ex ante. The default is less accommodating of inattention; it does not readily absorb deficiencies in clause design through institutional reconstruction.

By contrast, a plenary institutional model is more accommodating in operation. It offers a comprehensive mechanism for addressing failure once it occurs. That feature does not negate the value of careful drafting, but it softens the consequences of its absence. The incentive to engage in bespoke design remains, but it is less acute, because the system supplies a more capacious corrective at the point of breakdown.

The comparison is therefore one of degree rather than kind. Both models preserve party autonomy at the drafting stage. Both permit the construction of tailored mechanisms. The difference lies in how forcefully the default rule compels parties to exercise that autonomy in advance. Retention sharpens that compulsion by fixing the consequences of failure and limiting institutional correction; reversion moderates it by providing a more expansive institutional response once failure occurs.

L. Strategy

A further dimension of comparison concerns strategy—understood here as the structured use of procedural opportunities once a dispute has arisen: how each model enables, constrains, or redirects the strategic deployment of timing, sequencing, and party configuration at the point of tribunal constitution. The enquiry is not whether such behaviour occurs—arbitral practice makes clear that it does—but how the applicable mechanism organises its effects: whether it renders them predictable, limits their scope, or redistributes them across different stages of the process. The question is therefore not one of elimination, but of channel and form.

Under the retention model, a familiar concern is sometimes advanced: that an Article 11(2)-type provision may encourage earlier commencement of proceedings in order to secure an initial advantage in the constitution of the tribunal. The argument is not that claims would be contrived or premature in any absolute sense; it is more particular. Timing becomes a lever. The party who moves first may influence the constitution of the tribunal before the full multiparty configuration has crystallised; those who enter later may find themselves bound by a tribunal whose composition they did not shape.

That concern is not without foundation. It must, however, be located within the broader architecture of the Rules. The premise that such dynamics are introduced by Article 11(2) cannot be sustained. The Rules already recognise, and in material respects depend upon, the procedural significance of sequence. Under the joinder regime, a party may be introduced after constitution without reopening the appointment process. Under the consolidation regime, proceedings are, in the absence of agreement, consolidated into the arbitration deemed to have been commenced first. In both settings, timing carries durable consequences. Appointment asymmetry may arise; it is neither exceptional nor treated as a defect. It is accepted as the corollary of efficiency, coherence of outcome, and procedural economy.

Against that background, Article 11(2) does not introduce a new distortion. It operates within an existing logic. Multipartism, as the Rules conceive it, is dynamic: it may exist from the outset; it may emerge subsequently through joinder, consolidation, or the aggregation of claims. Sequence is therefore not an aberration; it is inherent in the system. If first-mover effects were sufficient to disqualify the mechanism at the point of constitution, the same objection would extend, without distinction, to the regimes governing joinder and consolidation. The Rules do not proceed on that footing.

Nor does the recasting of the concern in terms of "acceleration" materially advance it. Arbitration is rarely commenced at a moment of equilibrium. Parties act under familiar pressures: to preserve claims, to pre-empt parallel proceedings, to secure procedural definition. Article 11(2) does not generate those incentives. It clarifies their procedural consequences. The fixing of the tribunal at the point of commencement is not a distortion of the process; it is an expression of a rule-based allocation of procedural effect.

It is also necessary to recognise the countervailing constraint inherent in that allocation. Early commencement does not confer unqualified advantage. It fixes the tribunal against an incomplete understanding of the dispute's eventual scope. Subsequent joinder or consolidation may introduce parties with divergent or conflicting interests; the constitution remains unchanged. There is no mechanism of reconstitution, no opportunity for recalibration. What is gained in initiative is offset by a corresponding loss of flexibility. The initiating party assumes that risk at the moment of commencement.

Most importantly, the removal of Article 11(2) would not eliminate the underlying dynamic. Under a reversion model grounded in institutional constitution, the significance of timing persists, albeit in altered form. A claimant may proceed initially

against a selected counterparty; the tribunal may be constituted within that limited configuration; the dispute may then expand. Sequence continues to shape the procedural environment within which constitution occurs. The mechanism changes; the temporal structure of the process does not.

What does change, however, is the location of strategic engagement. Under a reversion model, the constitution of the tribunal becomes contingent upon institutional evaluation—of alignment, representation, and balance. That contingency introduces a further field within which strategic behaviour may operate. Parties may seek to influence the institutional assessment through the framing of claims, the grouping of parties, or the articulation of alignment and divergence. Strategy is not removed; it is redirected toward the discretionary space created by the model.

In that respect, the reversion model does not neutralise opportunism; it redistributes it. The strategic use of timing is supplemented by the strategic use of characterisation. The question is no longer confined to when proceedings are commenced, but extends to how the dispute is presented at the moment of institutional intervention. The locus of advantage shifts from sequence alone to the interplay between sequence and evaluation.

The comparison is therefore structural. Retention operates within, and makes explicit, an existing logic of sequence. It accepts that timing may have consequences, fixes those consequences in advance, and exposes both their advantages and their risks. Reversion does not remove the influence of timing; it relocates its effects and adds a further layer of contingency tied to institutional judgment. In neither model is strategic behaviour eliminated. The difference lies in whether it is governed by predefined consequences or mediated through discretionary assessment.

The choice is thus not between strategy and its absence, but between forms of its organisation. Retention channels strategy through rule: its effects are known, bounded, and symmetrical in their operation. Reversion channels strategy through discretion: its effects are contingent, case-specific, and dependent upon the interaction between party conduct and institutional evaluation. The question is which form of structuring is to be preferred: one that renders strategic consequences predictable, or one that relocates them within a more fluid, and less determinate, field of decision.

A final qualification is necessary. In either model, initial strategic calculations made at the point of commencement may be materially displaced once recourse is had to the other vectors of multipartism—joinder, consolidation, and multi-contract procedures. Those mechanisms may not merely expand the dispute; they may alter the constitution of the tribunal itself. Whether through consolidation into an already-constituted tribunal, joinder after constitution without reappointment, or the aggregation of claims under a single proceeding, the composition and representational balance of the tribunal may emerge in a form materially different from that initially anticipated. Strategy at the constitution stage is therefore inherently provisional: it operates within a procedural landscape that remains capable of subsequent reconfiguration, including

at the level of the tribunal's composition. The system does not eliminate that contingency; it institutionalises it.

M. Familiarity

A further dimension of comparison concerns familiarity: the extent to which each model aligns with patterns of use, expectation, and prior exposure across users, institutions, and reviewing courts. The enquiry is not whether a rule is intelligible in the abstract, but whether it operates within a framework already internalised in practice, and how far that internalisation conditions reception, application, and contestation at the point of tribunal constitution. The question is therefore one of cognitive and institutional embeddedness: whether the mechanism is encountered as an extension of an existing grammar or as a departure requiring renewed articulation.

Under the reversion model, familiarity operates as a distinct and practical advantage. The UNCITRAL framework has long functioned as a reference point for tribunal constitution across jurisdictions, institutions, and courts. It is not merely known; it is habituated. Counsel, arbitral institutions, and judges approach it with settled expectations as to how breakdowns in party appointment mechanisms are to be addressed. Reversion would therefore do more than resolve the immediate difficulty posed by Article 11(2); it would re-situate the Centre's practice within a normative and procedural template that is already widely recognised, repeatedly applied, and doctrinally assimilated.

That familiarity operates, first, at the level of users. Where a rule corresponds to a mechanism that parties and counsel have encountered across multiple institutional settings, tribunal constitution proceeds against a background of shared assumptions. There is less need to probe the limits of the provision; less incentive to contest its application at the threshold stage; and less scope for procedural surprise. Familiarity, in this sense, reduces interpretive friction at precisely the moment in the proceedings when uncertainty is most likely to disrupt progress. It facilitates application without the need for extended justificatory engagement.

Secondly, familiarity operates at the level of judicial reception. A model that has been widely adopted and repeatedly considered by courts is less likely to attract principled resistance. Reviewing courts are not required to engage, for the first time, with an unfamiliar allocation of authority or a novel configuration of appointment power. The framework has already been absorbed into the jurisprudence of multiple jurisdictions. The effect is not to eliminate scrutiny, but to channel it: challenges are more likely to concern the manner of application in a given case than the legitimacy of the mechanism as such.

Thirdly, familiarity derives cumulative force from repeated use. A model that has operated across a wide range of disputes benefits from a form of practical consolidation. Its contours are known; its operational limits have been tested; its implications have been worked through in practice. Confidence attaches not as a

matter of abstract endorsement, but as the product of sustained exposure. The rule is not merely understood; it is anticipated.

This point assumes particular salience in the present context. To the extent that the Cairo Rules are, in significant part, UNCITRAL-derived, users approach them with an expectation of structural continuity. That expectation is not confined to general orientation; it extends to the specific techniques by which procedural breakdowns are addressed. A departure at the level of tribunal constitution therefore carries a disproportionate effect: it interrupts an otherwise coherent pattern of expectation. Reversion, by contrast, restores alignment between the general architecture of the Rules and the specific mechanism governing failed joint nominations.

Taken together, these considerations explain the practical force of familiarity. It reduces the cognitive and procedural burden associated with applying the rule; it situates the Centre's practice within a framework already understood by its users; and it lowers the likelihood that the mechanism will be resisted at the level of principle. It does not eliminate risk; but it tends to contain it within known and manageable parameters.

Under the retention model, the position is more qualified. Article 11(2)-type mechanisms do not occupy the same degree of global diffusion as the UNCITRAL template. They are less widely internalised as a default reference point for tribunal constitution. For some users—particularly those whose experience is anchored in UNCITRAL-derived or closely aligned regimes—the mechanism may therefore require closer engagement at the threshold stage. Familiarity, in this sense, is less immediately available as a source of interpretive ease.

That said, the absence of universal familiarity does not entail anomaly. Article 11(2)-type provisions, while they may represent a minority configuration when viewed globally, are not isolated. Within certain institutional clusters, including those of immediate regional relevance, comparable mechanisms exist and are applied as part of ordinary practice. Familiarity, in other words, is not unitary but distributed: it reflects patterns of exposure rather than a single, universal baseline.

Nor does departure from a widely recognised model entail doctrinal fragility. A rule may require articulation without thereby attracting principled objection. Courts are capable of engaging with different configurations of appointment authority; and where such configurations are clearly expressed and consistently applied, they do not necessarily provoke resistance. The absence of familiarity may increase the burden of explanation; it does not, without more, generate instability.

It follows that familiarity operates as a practical advantage, but a bounded one. It bears upon reception, ease of application, and the likelihood that a mechanism will be accepted without contest at the threshold stage. It does not determine correctness; nor does it displace the need to assess the internal coherence and institutional consequences of the competing models. Its function is facilitative rather than determinative: it smooths application; it does not resolve the underlying design choice.

Seen in that light, reversion offers a distinct, but not decisive, benefit. It situates the Centre's practice within a framework that is widely recognised and unlikely to attract principled resistance as such. At the same time, retention operates within a field in which alternative models are neither unknown nor untested, particularly within the Centre's own regional and institutional environment. Familiarity therefore informs the comparison; it does not conclude it.

N. Positioning

Another dimension of comparison concerns institutional positioning. It is related to familiarity, but it addresses a different question: familiarity concerns whether a mechanism is recognised and internalised by its users; positioning concerns what that mechanism communicates about the institution that adopts it: how it situates its own role within the broader architecture of arbitral practice, and how that self-placement is likely to be read by users, courts, and other institutions. The enquiry is therefore not into recognition, but into alignment and institutional self-presentation. Put differently, familiarity concerns recognition; positioning concerns what is recognised as characteristic of the institution itself.

Part II provides the necessary frame for that enquiry.[7] It demonstrates that the responses to failed joint nomination cluster around a limited number of recurring structural models, defined principally by the allocation of authority between rule and institution. Those models are not merely technical variants. They embody distinct institutional postures. Some confine the institution to implementing an ex ante rule; others entrust it with plenary authority to reconstruct the tribunal through discretionary intervention. To adopt one or the other is therefore not simply to select a mechanism. It is to place the institution within a recognisable field of arbitral governance.

Viewed against that cartography, the reversion model aligns the Centre with the most widely diffused paradigm identified in Part II: plenary institutional constitution or some variant of it. That paradigm reflects an understanding of institutional authority in which the Centre assumes responsibility for restoring balance where party mechanisms fail, including, where appropriate, by revoking prior appointments and reconstructing the entire tribunal. Adoption of that model therefore signals an institution willing to intervene, to recalibrate, and to assume responsibility for the ultimate composition of the tribunal.

The retention model, by contrast, aligns with a different strand within the same comparative landscape: rule-based completion through limited substitution. Under that approach, the institution's role is confined; the consequences of failure are fixed ex ante; and continuity of party appointment is preserved to the greatest extent compatible with multipartism. The institutional signal is correspondingly different. It is one of restraint rather than reconstruction; of allocation rather than correction.

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[7] See Part II of the study, at note 1 above, specifically section IV on "Institutional rules on multiparty tribunal constitution," at pages 21-35.

This contrast may also be expressed, at a higher level of abstraction, as one of institutional temperament. The retention model reflects a more liberal conception of private ordering: the Rules confer freedom in the design of the appointment mechanism and allocate, in advance, the consequences of its failure, leaving parties to bear the results of their own choices. The reversion model reflects a more corrective conception: where party autonomy fails to produce an acceptable configuration, the institution assumes responsibility for restoring balance through intervention. Positioning therefore captures not only where the Centre sits within the comparative landscape, but how it understands the proper relationship between party autonomy and institutional authority.

At a global level, the distinction is one of relative alignment and differentiation. Reversion places the Centre within a widely recognised and extensively adopted paradigm of institutional intervention. Retention places it within a more delimited, though well-established, model of governance. The distinctiveness of the latter lies not in novelty, but in the fact that it is less frequently encountered as the default point of reference in transnational practice.

That assessment, however, alters when the frame of reference shifts from the global to the regional. As Part II showed, institutional practice is not evenly distributed.[8] Within the Centre's immediate regional ecosystem, approaches based on structured completion and limited intervention are neither anomalous nor isolated. In that setting, the retention model forms part of a recognisable pattern of institutional design.

Institutional positioning is therefore relative rather than absolute. The same model may signal alignment in one frame and differentiation in another. For users operating within a regional environment in which limited-substitution models are established, retention may appear coherent and expected. For users approaching from a broader international practice shaped by discretionary paradigms, the same model may appear more distinctive and may require more explicit articulation.

The consequences of that positioning are principally perceptual. A model that aligns with widely diffused institutional practices benefits from immediate intelligibility: it situates the Centre within a familiar constellation of approaches and reduces the need to explain its role at the point of intervention. A more delimited model places greater weight on articulation: its logic must be stated, its limits understood, and its coherence demonstrated.

The comparison may therefore be stated with precision. Reversion aligns the Centre with a widely diffused, discretionary model of institutional constitution identified in Part II, with corresponding advantages of global convergence and immediate recognisability. Retention aligns the Centre with a more delimited, rule-based model, also identified in Part II, which is regionally supported and internally coherent, but more distinctive at the level of global diffusion. The cost of that distinctiveness is

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[8] See Part II of the study at note 1 above, especially section IV.E on "War of the Models.".

primarily perceptual; its justification lies in coherence, administrability, and institutional fit.

Positioning, in that sense, does not resolve the choice between the models; it sharpens its meaning. It shows that the decision is not only about how failed joint nomination is to be addressed, but also about how the Centre understands its own role: whether as an institution that allocates responsibility and stands back, or as one that intervenes to restore balance when party mechanisms fail.

O. Diversity

A final dimension concerns the distribution of access to arbitral appointments. It intersects with positioning and, to some extent, with governance, but it raises a distinct enquiry. The question is not how the institution presents itself, nor how it organises decision-making internally, but how the choice of model structures entry into, and circulation within, the pool of arbitrators over time. The focus is therefore functional and longitudinal: it concerns the ecology of appointments rather than the mechanics of any single constitution.

Under a rule-based model, appointing authority remains, to the greatest extent possible, with the parties. The structure is decentralised. Selection is dispersed across users; it reflects heterogeneous preferences; it is responsive to the particularities of individual disputes. That decentralisation carries an evident virtue: it resists the concentration of influence within a single institutional node and preserves a pluralistic mechanism of access to arbitral office.

That same feature, however, entails a characteristic pattern of reproduction. In repeat-player environments, parties tend to draw upon known candidates; familiarity informs preference; preference stabilises into habit. Over time, those habits generate relatively stable networks of appointment. Entry into those networks is possible, but not evenly distributed; it depends upon visibility, prior selection, and reputational transmission within existing circles. The model does not exclude diversification, but it does not actively produce it. It leaves its realisation to the evolution of party behaviour rather than to the structure of the mechanism itself.

Under an institution-led model, that distribution is altered in form. Appointment authority is, in part, centralised. The institution acquires the capacity to shape the composition of tribunals directly, rather than merely to complete or facilitate party choice. In structural terms, the mechanism moves from dispersed selection to mediated allocation. That shift carries an evident potential: the institution may draw upon broader pools, introduce less frequently appointed candidates, and moderate the recursive effects of party preference. It is, in principle, a mechanism capable of widening access.

That capacity, however, is contingent rather than automatic. It depends upon how the institution exercises its function: the composition of the appointing body; the breadth of its reference pool; the internal incentives that govern selection; and the degree to which diversification is treated as an operational objective rather than an incidental

by-product. Centralisation does not, of itself, dissolve patterns of concentration. It may instead reconfigure them. Where party-led repetition produces visible networks, institutional selection may produce less visible, but no less durable, patterns of preference. The locus of influence shifts; it does not disappear.

The comparison is therefore not between diversity and its absence, nor between openness and closure. It is between two modes of distribution, each with its own structural tendencies. The rule-based model diffuses appointing power but risks the iterative reproduction of established preferences. The institution-led model concentrates appointing power but introduces the possibility—though not the guarantee—of deliberate diversification, while also carrying the countervailing risk of institutional consolidation and path dependency.

What differs, at root, is the site at which the composition of the field is shaped. In the former, it is shaped externally, through the aggregated choices of parties across cases. In the latter, it is shaped internally, through the repeated exercise of institutional discretion. The consequences are cumulative. Over time, each model generates a different pattern of access, visibility, and circulation within the arbitral community.

In that sense, this dimension extends beyond the immediate problem of tribunal constitution. It engages the longer-term structure of the arbitral system: who is appointed; how frequently; through what channels; and with what degree of concentration or dispersion of influence. The choice between the models therefore implicates not only how tribunals are constituted in individual cases, but how the composition of the arbitral field itself is formed and re-formed over time.

IV. From design to decision

The analysis has now traversed the field. The competing models have been examined across the relevant dimensions; their internal logic has been made explicit; their consequences have been traced without compression or simplification. The exercise has not been to weigh competing advantages in the abstract, nor to assemble a cumulative case for one outcome over another. It has been to render the structure of the choice visible: to isolate, organise, and articulate the considerations that bear upon it, so that the decision may be taken with full awareness of its implications.

This concludes the three-part study. A structural inconsistency has been identified; its sources have been located; its operation has been explained. That identification carries with it a corresponding obligation: to determine how the difficulty is to be addressed. The problem is no longer diffuse or impressionistic; it has been recast in juridical terms, and the available pathways have been delineated with precision.

At that point, the enquiry necessarily changes register. The task is no longer analytical, but decisional. The material conditions for decision are in place; the alternatives are defined; the consequences of each have been mapped. No further elaboration is required to render the choice intelligible. What remains is to choose between them or to craft a hybrid.

The present condition does not admit of attenuation. The status quo identified in Part I is not a stable resting point; it is a condition of misalignment between rule and application. That misalignment is not self-correcting; it is generative. It carries consequences that are neither remote nor contingent. Questions of tribunal constitution attract exacting scrutiny; they are reviewed without deference; they are measured against the Rules as applied. Where constitution departs from those Rules, the consequence is not discretionary. It is dispositive—whether at the seat or at the enforcement stage under the New York Convention.[9] The risk is therefore not marginal; it is structural. For the parties, it may determine the fate of the award; for the institution, it bears directly upon the perceived reliability of its procedural framework.

There is, moreover, a distinction of order between ordinary imperfection and informed inaction. A rule or practice may prove inadequate in the course of application; that is an incident of any legal system. But once a difficulty has been identified, analysed, and articulated, the position changes. The question is no longer whether the framework operates imperfectly; it is whether a known defect is to be maintained. The significance of that shift does not require elaboration. It is sufficient to observe that foreknowledge alters responsibility.

In that light, inaction cannot be treated as neutral. It is itself a form of choice. It does not preserve an existing equilibrium; it displaces the consequences of decision into other domains—into party conduct, into procedural contestation, and ultimately into judicial determination. Authority that is not exercised within the institution does not remain unexercised; it is assumed elsewhere, and on terms not controlled by the Rules. Nor is delay a distinct category. Delay is the temporal expression of inaction; it produces the same effects by degrees rather than at once. It prolongs uncertainty; it extends exposure; it allows the identified inconsistency to operate across further cases.

Against that background, the basis for decision is complete. The alternatives have been defined; their implications traced; their respective logics exposed. The analysis has done its work. What remains is not refinement, but determination.

The question is therefore not whether reasons exist to act; they do. Nor whether the implications of the available courses are understood; they have been set out. The question is whether the clarity now achieved will be translated into institutional choice.

Legal frameworks are tested in application. They reveal points of strain; they require, at times, re-articulation or adjustment. The capacity to respond to such moments is constitutive of institutional authority. The maintenance of coherence, once a

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[9] See Article V(1)(d) of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, commonly known as the New York Convention (1958), which provides in relevant part: "1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that: (d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place...."

divergence has been brought into view, is a function of governance. In the language of social theory, this study began by furnishing the Cairo Centre with reasons sufficient to act; it now concludes by furnishing the leaders of that institution with reasons sufficient to choose. The moment of choice has come. The clock is running.