What is good for the administration of justice? 
Considerations in light of the practice on third-party participation

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1. Introduction

On 5 June 2023, the International Court of Justice (ICJ) issued the Order on the admissibility of the declarations of intervention in the *Ukraine v Russia* case. Interestingly, the expression ‘good administration of justice’ comes up repeatedly in the Order, mainly as a potential limit to the admission of such interventions. The Court noted that ‘admitting the declarations of intervention in [that] case would not infringe the principles of equality of the parties or the good administration of justice’. The same concept also came up in the Declaration of Vice-President Gevorgian and in the Dissenting opinion of Judge Xue, appended to the ICJ’s Order. Both judges referred to good administration of justice as a limit to third-party intervention and a shield for equality of parties. Moreover, the Court relied on this concept as a rationale against the proliferation of declarations, arguing that it constituted a good reason for the choice of presenting a joint declaration.

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2. *Allegations of Genocide* (n 1) paras 47-53.

3. ibid para 53.


6. ibid para 88.
At the same time, third-party interventions have been welcomed as ‘propitiating the sound administration of justice’, considering this latter concept as requiring a court to take into consideration different interests, including those of third parties.

The nature of the connection between third-party participation and good administration of justice is thus not always clear. Does good administration of justice limit third-party participation, or does it require to take such requests into consideration? Rather than a problem merely concerning third parties, this seems to be a matter of knowing how much (and in which direction) good administration of justice steers the decision-making process of international courts and tribunals on procedural matters.

The following paragraphs aim to show that, far from offering a procedural ‘rule’, good administration of justice may be conceptualized as a standard of adaptation, guiding the international court or tribunal in the exercise of its leeway on procedural matters and helping to shape a procedure able to take into consideration all the aspects of substantive law.

Considering this objective, the paper unfolds in three sections. Section 2 focuses on the concept of good administration of justice, through reference to both jurisprudence and scholarship on the topic. Section 3 then presents the problematic sides of good administration of justice, evident in the discrepancies in its application. Section 4 shows how the characterization of good administration of justice as a flexible standard working as a link between substantive and procedural law emerges in the practice concerning third-party participation, meant as both third-party intervention and submissions by amici curiae. Ultimately, the paper shows that good administration of justice can perform a fundamental function as a balancing factor among the different needs of international justice. As substantive obligations have started involving more complex and collective interests, procedural law has joined the conversation through an application of procedural mechanisms (such as those concerning third-party participation) reflecting a conception of international justice not exclusively dedicated to the protection of the interests of the parties but pulled between two opposing poles: the protection of the parties and the preservation and furtherance of collective interests.

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7 Whaling in the Antarctic (Australia v Japan) (Declaration of Intervention of New Zealand: Order) [2013] ICJ Rep 3 Separate opinion of Judge Cançado Trindade para 68.
2. The evolution of the concept of good administration of justice

‘Good administration of justice’ is a complex concept, which cannot be easily defined. Broadly, it refers to all aspects of judicial proceedings and can assume a functional connotation, dependent upon the context in which it is employed. It can thus be said that good administration of justice has, at least, two dimensions: it has to do both with the good administration of the proceedings and the idea of good justice. Some clarifications are, however, in order.

First, reference to it is made through a wide variety of expressions: proper administration of justice, sound administration of justice, bonne administration de la justice, meilleure administration de la justice, better administration of justice, fair administration of justice. These can all be considered to refer to the same concept.

Second, the reference is to international justice, at least for the purposes of this investigation. Indeed, some of the first references to good administration of justice even in international case law refer to issues of denial of justice and, thus, to the administration of domestic proceedings. Notably, in 1861, the ad hoc arbitration in the case Yuille, Shortridge & Cie. (Great Britain v Portugal) used exactly the wording ‘bonne administration de la justice’, but with reference to guarantees to be ensured by States in domestic judicial proceedings. Similarly, in the umpire’s opinion concerning the 1903 ad hoc arbitration in the Poggioli Case reference is made to ‘proper administration of justice’, once again referring to domestic proceedings.

10 ibid paras 1-2.
12 Dispute between Great Britain and Portugal in the case of Yuille, Shortridge & Cie. Award rendered by the Senate of the Free City of Hamburg on 21 October 1861 (Great Britain v Portugal) (1861) 29 RIAA 57.
13 ibid 64.
14 Poggioli Case (Opinion of Ralston, umpire) (1903) 10 RIAA 669, 685. See, for another example of ad hoc arbitration, British property in Spanish Morocco (Spain v United Kingdom) (1925) 2 RIAA 615, 731.
Third, good administration of justice is a concept that has acquired different stratifications of meaning over time. It is difficult to pinpoint the moment in which such evolution began, but it may be noted that no reference to it can be found in the text of the 1899 and 1907 Conventions for the Pacific Settlement of International Disputes. Similarly, no reference to this concept seems to be present in the available travaux preparatoires of these Conventions, but the ‘Rapport de la troisième commission, relatif au règlement pacifique des conflicts internationaux’,\textsuperscript{15} in the commentary to Article 15 (la justice arbitrale), referred to international arbitration’s role in regulating international disputes ‘sur la base du respect du droit, conformément aux exigences de la justice’, adding: ‘tels sont les traits fondamentaux de le justice arbitrale’.\textsuperscript{16} Some reference to the needs of international arbitration and of justice was thus already present, although it is only with the Permanent Court of International Justice (PCIJ) that good administration of justice finds better support before an international court.

The first reference to administration of justice can be found in Mavrommatis, where the PCIJ captured the main function of this maxim, referring to a lacuna in its Statute and Rules of Court: ‘The Court […] is at liberty to adopt the principle which it considers best calculated to ensure the administration of justice’.\textsuperscript{17} We have, however, to wait until 1938 for an express and ‘institutionalized’ reference to good administration of (international) justice in a PCIJ case. In issuing the Order on preliminary objections in the Panevezys-Saldutiskis Railway case, the PCIJ stated: ‘the Court may order the joinder of preliminary objections to the merits, whenever the interests of the good administration of justice require it’.\textsuperscript{18} This was not a coincidence as the expression good (or proper) administration of justice appears repeatedly in the debates that led to the Rules

\textsuperscript{15} S Rosenne, \textit{Les Conférences de la paix de La Haye de 1899 et 1907 et l’arbitrage international} (Bruylant 2007) 27 ff.
\textsuperscript{16} Ibid 39.
\textsuperscript{17} \textit{Mavrommatis Palestine Concessions} ( Judgment, Objection to the Jurisdiction of the Court) [1924] PCIJ Series A no 2, 16. See also R Kolb, ‘La maxime de la “bonne administration de la justice” dans la jurisprudence internationale’ (2009) 27 L’Observateur des Nations Unies 5, 17.
\textsuperscript{18} Panevezys-Saldutiskis Railway (Order, Preliminary Objections) [1938] PCIJ Series A/B no 75, 56.
What is good for the administration of justice of Court of 1936, showing its diffusion among scholars and practitioners. The diffuse reference to good administration of justice was then inherited by the ICJ, which has used this expression repeatedly, as well as by other international courts and tribunals.

A final clarification can concern the legal nature of good administration of justice. This paper could not offer a complete overview of the complex debate on its nature, but some elements appear to be consolidated, as good administration of justice is generally connected to the category of general principles of law, within the meaning of Article 38(1)(c) of the ICJ Statute. Moreover, as a general principle, good administration of justice ‘has a number of specific functions, and also a more general residual one’ and can be concretized in detailed rules, apt to govern specific aspects of the proceedings.

In light of the above, it is clear that this concept can permeate the rules of procedure of international courts and tribunals, functioning as a flexible standard ‘without which no legal system can function

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21 See the next Section for references to the European Court of Human Rights (ECtHR) and to arbitration within the framework of the International Centre for Settlement of Investment Disputes (ICSID).

22 See, on this matter, Kolb, ‘La maxime de la “bonne administration de la justice”’ (n 17).


25 Cazala, ‘Good Administration of Justice’ (n 9) para 3.
properly\(^\text{26}\) and directing the adjudicative body through an effective and efficient decision-making process.\(^\text{27}\)

3. Structural ambiguities of the principle of good administration of justice

The principle of good administration of justice, as just outlined, presents severely blurred contours. It has been argued that any attempt to offer a more precise definition would be, as eloquently put by the late Judge Cançado Trindade in his Separate Opinion in the *Nicaragua v Costa Rica* case, ‘far too pretentious, and fruitless’.\(^\text{28}\) However, defining the principle as a standard directing the adjudicative body through an effective and efficient decision-making process does not solve the problem of understanding in which direction does the principle ‘pull’ and runs the risk of reducing good administration of justice to a rhetoric expedient.

Two problematic areas can thus be highlighted: the scope of application of the principle and the discrepancies in its application in the practice of international courts and tribunals.

Delving into the first area of concern, the principle of good administration of justice has been connected to many different functions. The

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\(^{26}\) Kolb, *The International Court of Justice* (n 24) 1136.


\(^{28}\) *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v Costa Rica)* (Joinder of Proceedings: Order) [2013] ICJ Rep 184, Separate opinion of Judge Cançado Trindade para 20: ‘To attempt to offer a definition of the sound administration of justice that would encompass all possible situations that could arise would be far too pretentious, and fruitless. An endless diversity of situations may be faced by the ICJ, leading it — in its pursuit of the realization of justice — to deem it fit to have recourse to the principle of the sound administration of justice (la bonne administration de la justice); this general principle, in sum, finds application in the most diverse circumstances.’ See also Cazala, ‘Good Administration of Justice’ (n 9) para 2.
ICJ, for instance, has connected this principle to a wide variety of procedural matters: provisional measures,\(^\text{29}\) equality of parties,\(^\text{30}\) third-party intervention,\(^\text{31}\) counter-claims,\(^\text{32}\) joinder of objections,\(^\text{33}\) default proceedings,\(^\text{34}\) evidence.\(^\text{35}\) Scholarship has echoed a similar wide approach to the area of application of the principle.\(^\text{36}\) This is hardly surprising: if good administration of justice has as its objective that of ‘bien gérer le fonctionnement de la justice et bien rendre la justice’,\(^\text{37}\) its area of concern coincides with the whole procedure of the adjudicative body.

The issue, however, is that it appears to protect both the needs of the parties to the proceedings and the functioning of the adjudicative body.


\(^{30}\) Judgments of the Administrative Tribunal of the ILO upon Complaints Made against UNESCO (Advisory opinion) [1956] ICJ Rep 77, 86; Judgment No 2867 of the Administrative Tribunal of the International Labour Organization upon a Complaint Filed against the International Fund for Agricultural Development (Advisory Opinion) [2012] ICJ Rep 10 para 35.


\(^{34}\) Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America) (Merits: Judgment) [1986] ICJ Rep 14 para 31; Arbitral Award of 3 October 1899 (Guyana v Venezuela) (Jurisdiction of the Court: Judgment) [2020] ICJ Rep 455 para 25.


\(^{36}\) Scholarship has connected good administration of justice to to issues of reasonable length of proceedings, cost, equality of parties, judicial economy, and judicial integrity. See Cazala, ‘Good Administration of Justice’ (n 9) paras 12, 17-32; Kolb, ‘La maxime de la "bonne administration de la justice"’ (n 17) 9-12

\(^{37}\) Cazala, ‘Adaptation des règles et principes probatoires’ (n 8) 57.
These two elements do not always go hand in hand, as for example allowing a third party to intervene may at the same time enhance the quality of the final decision and make the original parties’ procedural strategy burdensome. This has also been defined with reference to an ‘internal’ and an ‘external’ dimension of good administration of justice, ie with reference to the organization of the procedure or to the result of such procedure, aiming at an ideal of justice.\(^{38}\)

Moving to the second area, the wideness and potential for subjective interpretation of the ideas of good and justice lead to discrepancies in the application of this principle.\(^{39}\) A good example of such problematic application is the reference to this principle made in dissenting opinions aimed at contesting the procedural choices of a court or tribunal.\(^{40}\) In the already mentioned Order on the admissibility of the declarations of intervention in the \textit{Ukraine v Russia} case,\(^{41}\) the ICJ addressed Russia’s objections to the declarations based on the principle of good administration of justice. Nevertheless, both the Declaration of Vice-President Gevorgian\(^{42}\) and the Dissenting opinion of Judge Xue,\(^{43}\) appended to the ICJ’s Order, contested the Court’s decision based on good administration of justice. Specifically, Vice-President Gevorgian’s Declaration refers to an ‘inherent tension’ between the right to intervene under Article 63 and the principle of ‘fair administration of justice’,\(^{44}\) arguing that the Court should have carried out a more detailed examination of the impact of the proposed interventions on the good administration of justice.\(^{45}\) This is just one of the many instances in which a declaration or dissenting opinion refers to good administration of justice, meaning that the Court’s

\(^{38}\) ibid.


\(^{40}\) ibid 126-128.

\(^{41}\) \textit{Allegations of Genocide} (n 1). See, on these requests for intervention Bonafé, ‘The collective dimension of bilateral litigation’ (n 1).

\(^{42}\) \textit{Allegations of Genocide} (n 1) Declaration of Vice-President Gevorgian.

\(^{43}\) ibid Dissenting opinion of Judge Xue.

\(^{44}\) ibid Declaration of Vice-President Gevorgian para 4.

\(^{45}\) ibid para 6.
attention to the principle had not, in a Judge’s view, been sufficient to act in conformity to it.\textsuperscript{46} These discrepancies are, as already mentioned, due to the wide meaning of good administration of justice, but could also be connected to the way in which this principle was incorporated into the procedure of the different adjudicative bodies. Permanent courts appear to make a more ‘institutionalized’ recourse to it.\textsuperscript{47} For example, before the ICJ, the wide attention for good administration of justice translated, in 2002, in the inclusion of a reference to ‘sound administration of justice’ in Practice Direction VII and VIII and in another addition in 2013, with the formulation of Practice Direction IX\textit{q}uater. Similarly, in the Rules of Court of the European Court of Human Rights (ECtHR) ample reference to good administration of justice can be found. Specifically, ‘proper administration of justice’ is an element of Rule 44 (Third-party intervention), 44A (Duty to cooperate with the Court), 61 (Pilot-judgment procedure), A3 (Failure to appear before a delegation), A7 (Hearing of witnesses, experts and other persons by a delegation).\textsuperscript{48} Although the case-law of the EC-

\textsuperscript{46} Examples of this kind are not limited to declarations of intervention. For example, in its order on the request for counter-claim in \textit{Jurisdictional Immunities of the State (Jurisdictional Immunities of the State (Germany v Italy))} (Counter-Claim: Order) [2010] ICJ Rep 310, the ICJ referred to proper administration of justice, stating that ‘the Respondent cannot use a counter-claim […] to impose on the Applicant any claim it chooses, at the risk of infringing the Applicant’s rights and of compromising the proper administration of justice’ (para 31). Notably, Judge Cançado Trindade opined that the ICJ should not have taken such decision ‘without first having heard the contending Parties in a public sitting, for five reasons, [including]: (a) first, as a basic requirement ensuing from the principle of international procedural law, of the sound administration of justice (\textit{la bonne administration de la justice})’ (ibid Dissenting opinion of Judge Cançado Trindade para 30).

\textsuperscript{47} Reference is made, in this paper, only to the ICJ as a purely inter-state court. Other adjudicative bodies refer to this principle, even in absence of a specific inclusion of it in the rules of procedure. For example, the principle has been recalled in the practice of the International Tribunal for the Law of the Sea (ITLOS) (see for example \textit{Arctic Sunrise (Kingdom of the Netherlands v Russian Federation)} (Provisional Measures: Order of 22 November 2013) [2013] ITLOS Rep 230 para 53). The rules of procedure of ITLOS do not include a reference to good administration of justice (except for the ‘Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea’).

\textsuperscript{48} ECtHR Rules of Court (23 June 2023) <www.echr.coe.int/documents/d/echr/rules_court_eng>. Interestingly, similar wording can be found in Rule 92 of the Rules of Procedure of the African Commission on Human and Peoples’ Rights (<https://achpr.au.int/sites/default/files/files/2021-04/rulesofprocedure2020eng1.pdf>), which provides that '[t]he
THR is mostly concerned with good administration of justice as an element of fair trial, to be ensured by States in domestic proceedings, the Court has also sometimes referred to it in order to support a procedural decision.

On the contrary, neither the ICSID Convention nor the Arbitration Rules of ICSID refer to good administration of justice. Here again reference to this concept can concern the standard of treatment before domestic courts, even though traces of it can be found in awards concerning international arbitration itself. In sum, as clearly put by Kolb:

‘Le concept de la “bonne administration de la justice” est invoqué surtout par la justice institutionnelle, par la Cour internationale de Justice (CIJ) par exemple, plus que par les tribunaux arbitraux. C’est un des domaines dans lesquels la différence entre les deux types de justice se manifeste et s’accuse.’

This is not just the result of the difference among types of international adjudication, but also the outcome of the evolution of international parties to a Communication have a duty to cooperate fully in the conduct of the proceedings before the Commission and, in particular, to take such action within their power as the Commission considers necessary for the proper administration of justice.’

See, for example, Morice v France App no 29369/10 (ECtHR, 23 April 2015).


See American Manufacturing & Trading, Inc v Republic of Zaire, Award, ICSID Case no ARB/93/1 (21 February 1997) para 7.18; Jan de Nul N.V and Dredging International N.V v Arab Republic of Egypt, Award, ICSID Case no ARB/04/13 (6 November 2008) para 261; HOCHTIEF Aktiengesellschaft v Argentine Republic, Decision on Liability, ICSID Case no ARB/07/31 (29 December 2014) para 206; AHG Industry GmbH & Co. KG v Republic of Iraq, Award on the Respondent’s Application Under ICSID Rule 41(5), ICSID Case no ARB/20/21 (30 September 2022) paras 185, 224, 226, 228.

Kolb, ‘La maxime de la “bonne administration de la justice”’ (n 17) 5.
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adjudication itself,\(^{54}\) which has evolved from a means to avoid the pretext for war\(^{55}\) to a more refined way of settling international disputes and protecting the rule of law.\(^{56}\)

4. *Third-party participation as the testing field for the development of good administration of justice*

The areas of concern just outlined may appear as a problem to which no solution can be offered. As mentioned in the introduction, however, they may become less problematic if the principle of good administration of justice is intended in its purely functional meaning of guiding international courts and tribunals in the process of adapting their own procedural rules to the developments of substantive law. This is not a reference to adjudicative bodies’ power to regulate their own procedure, but rather to a standard which imposes that, in the exercise of such discretion on matters of procedure, the best solution possible is found, balancing contrasting tensions such as that between the bilateral model of international adjudication and the increasing relevance of collective interests before international courts and tribunals.

This solution thus is particularly needed during the examination of requests for third-party participation.\(^{57}\) Indeed, the existing rules of procedure, as well as the practice of international courts and tribunals, show

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\(^{54}\) Indeed, different tensions may coexist within the same adjudicative body. See, with regard to the ICJ, S Forlati, *The International Court of Justice. An Arbitral Tribunal or a Judicial Body?* (Springer 2014) 210: ‘This multi-faceted approach to the notion of “judicial function” permeates the Court’s case law: it comes to the fore in the Court’s use of the concept of “sound administration of justice”—so as to justify choices that are at times much more autonomous from the parties’ wishes that those typical of an arbitral tribunal—and influences also aspects of its contentious proceedings where the parallels with international arbitration are particularly significant.’


that good administration of justice is used as exactly such flexible standard of adaptation when adjudicators are faced with requests for third-party participation.

This employ of the principle is evident in the practice concerning amici curiae submissions. With this expression reference is made to a party which ‘is not actually a party to the dispute but is nevertheless allowed to submit a written statement during the proceedings and, less commonly, is allowed to be heard by the court or tribunal’.58 Amici curiae are not, thus, intervening third parties – with a specific legal interest – but rather parties which aim to bring relevant information to the adjudicative body.59 The functions of amici curiae briefs are diverse and seem to point to a tool that can increase the quality of the procedure, the ‘good administration of justice’,60 without being too burdensome for the parties to the case. For this reason, amici curiae have been allowed, to various degrees, access to international adjudication, but nonetheless they can have an impact on the overall procedure, ie by introducing new facts, damaging for one of the parties. Against this backdrop, an interesting practice is that of regional human rights courts, which have referred to good administration of justice as a guiding parameter in the balancing act between the needs of the parties and their ‘quasi-constitutional’ function,61 intended as their role as guardians of the respective human rights treaties.62 Such role inevitably has an impact on the courts’ interpretation of the concept of ‘administration of justice’.


61 The idea that good administration of justice helps the ECtHR towards the concept of ‘constitutional justice’ is put forth by N Bürli, Third-Party Interventions before the European Court of Human Rights (Intersentia 2017) 119, 122.

62 Specifically, the ECtHR admits both ‘private-interest’ intervention, ie the intervention of third parties ‘with a legal interest that will directly be affected by the court’s decision’, and ‘public interest’ intervention, ie the intervention of ‘governments and civil society representatives – often representing clashing values – in cases involving
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Matters change with regard to third-party intervention, i.e., the case where a third party participates to the judicial proceedings in protection of a different, autonomous interest. The status of this intervening party is not clear across systems: while a distinction was made between intervention as ‘party’ or ‘non-party’ in terms of procedural status of the intervener, the existence of a clear difference in terms of the effects of the final decision is heavily discussed. In any case, this kind of participation inevitably has a heavier effect on the parties to the case and thus the recourse to good administration of justice as a tool directed at protecting the function of the adjudicative body rather than the parties is less straightforward. Nevertheless, this principle has an impact on the choice whether to admit interventions. This was at the center of a debate within the ICJ which clearly outlines how good administration of justice can be used for multiple, diverging, purposes.

In its decisions on the applications for permission to intervene of Honduras and Costa Rica in the Territorial and Maritime Dispute (Nicaragua v Colombia) case, the ICJ expressly referred to a link between good administration of justice and intervention under Article 62 of the ICJ Statute:

ethically and socially controversial issues’ (Wiik (n 60) 140-143). Different is the procedure before the Inter-American Court of Human Rights (IACtHR), where there is a long tradition of admitting submissions from amici curiae, but mostly public-interest submissions. Amicus curiae submissions do not seem to be, in the opinion of the IACtHR, an element which may unbalance the proceedings but rather a key tool for the final decision on the case and the ‘strengthening’ of the Inter-American System of Human Rights (IACtHR, Case of Kimel v Argentina (Judgment of 2 May 2008) para 16). Finally, the African Court of Human and Peoples’ Rights (ACtHPR), after the 2020 revision of the Rules of Court, accepts both amici curiae and third-party intervention, provided for in Rule 61(2) (L Burgorgue-Larsen, GF Ntwari, ‘Chronique de jurisprudence de la Cour africaine des droits de l’homme et des peoples’ (2021) 128 Revue trimestrielle des droits de l’homme 991). The use of the expression ‘in the interest of justice’ suggests a similar criterion used for third-party participation before the ECtHR.


ibid para 13.

For a review of this issue before the ICJ see Z Crespi Reghizzi, L’intervento ‘come non parte’ nel processo davanti alla Corte internazionale di giustizia (Giuffrè 2017) 317 ff.

Territorial and Maritime Dispute (Nicaragua v Colombia) (Application by Honduras for Permission to Intervene) (n 31); Territorial and Maritime Dispute (Nicaragua v Colombia) (Application by Costa Rica for Permission to Intervene) (n 31).
‘It is true that, as it has already indicated, the Court “does not consider paragraph 2 [of Article 62] to confer upon it any general discretion to accept or reject a request for permission to intervene for reasons simply of policy” […] It is for the Court, responsible for safeguarding the proper administration of justice, to decide whether the condition laid down by Article 62, paragraph 1, has been fulfilled.’

This passage attracted criticism, as the Court rejected the requests for permission to intervene ‘in light of this concept, in besides the conditions laid down in Article 62(1)’. The admissibility of third-party intervention is often evaluated using as a key criterion good administration of justice, but some dissenting judges relied on the same principle to state the opposite of the majority decision. Judge Abraham even took issue with this characterization altogether, noting that:

‘The French text could be understood as allowing the Court a free hand to decide whether or not the intervention would help the principal proceedings to progress smoothly, in other words, whether it would serve the sound administration of justice to authorize it. […] According to this interpretation, even if this condition is met, the Court could refuse to allow the intervention if it considers — taking account of all the circumstances of the case — that it would not be in the interests of the sound administration of justice. If that is correct, the Court would in

67 Territorial and Maritime Dispute (Nicaragua v Colombia) (Application by Honduras for Permission to Intervene) (n 31) para 36. A similar concept is expressed in para 25 of the decision on Costa Rica’s application for permission to intervene (Territorial and Maritime Dispute (Nicaragua v Colombia) (Application by Costa Rica for Permission to Intervene) (n 31)).

68 Sakai (n 39) 120.

69 Bonafé, La protezione degli interessi di Stati terzi (n 57) 238.

70 Territorial and Maritime Dispute (Nicaragua v Colombia) (Application by Costa Rica for Permission to Intervene) (n 31) Dissenting Opinion of Judge Al-Khasawneh para 7: ‘If the fault does not lie with the text of Article 62, where does it lie? And why has the institution of intervention with its potential to avoid repetitive litigation and to afford a fair hearing to those States whose interest may be affected by the Court’s decision, and thus to ensure a better administration of justice, been so peripheral as an institution of international law?’; ibid Joint Dissenting Opinion of Judges Cançado Trindade and Yusuf para 28: ‘Intervention under Article 62 was conceived, for the purposes of the sound administration of justice, to operate prior to the issuance of a final decision by the Court, and thus before Article 59 comes into operation, to enable a third party which considers to have an interest of a legal nature to make its case to the Court, so that the Court may take such an interest into account before reaching its decision on the main proceedings.’
effect have a truly “discretionary” power, and there would certainly be no “right” to intervene for third States.\textsuperscript{71}

Flexibility is needed also with regards to the scope of application of the principle. Indeed, if good administration of justice protects equality of parties and the balance between them, it may very well work as a ‘shield’, preventing intrusions from third parties which may unbalance the existing relationship. In this sense, it seems, good administration of justice is perceived in the already mentioned Declaration of Vice-President Gevorgian\textsuperscript{72} and the Dissenting opinion of Judge Xue\textsuperscript{73}, appended to the ICJ’s Order in Ukraine v Russia. Indeed, both judges refer to good administration of justice as a principle requiring that equality of parties not be compromised. On the other hand, if the principle is connected to an aim for ‘justice’ (at least procedural justice), hearing from parties other than the principal ones may be in the interest of the best possible outcome. From this perspective, good administration of justice would favour third-party intervention.\textsuperscript{74} This problem of course emerges fully when the ICJ is faced with requests for third-party participation, since ‘[u]nlike arbitral tribunals, the Court is not merely a tool in the hand of the parties […] the Court should take into account not only the interest of the parties but also the possible interests of third parties and, more generally, the interest in the proper administration of justice’.\textsuperscript{75}

From this overview, it may appear that the recourse to a flexible good administration of justice can only smooth the process of requests for amici curiae submissions. Yet, the last years have seen an insurgence of applications for third-party intervention,\textsuperscript{76} welcomed as ‘propitiating the sound administration of justice (la bonne administration de la justice), attentive to the needs not only of all States concerned but of the interna-

\textsuperscript{71} Territorial and Maritime Dispute (Nicaragua v Colombia) (Application by Honduras for Permission to Intervene) (n 31) Dissenting Opinion of Judge Abraham para 10.

\textsuperscript{72} Allegations of Genocide (n 1) Declaration of Vice-President Gevorgian.

\textsuperscript{73} ibid (n 1) Dissenting opinion of Judge Xue.

\textsuperscript{74} Bonafé, La protezione degli interessi di Stati terzi (n 57) 238.

\textsuperscript{75} P. Palchetti, ‘Opening the International Court of Justice to Third States: Intervention and Beyond’ (2002) 6 Max Planck YB of United Nations L 139, 175.

\textsuperscript{76} See, for a recent example, Allegations of Genocide (n 1).
tional community as a whole, in the conceptual universe of the *jus gentium* of our times.* Third-party intervention – an increasingly common occurrence as the two-party model is often a simplification of a much complex reality* – is in particular need of a flexible application of the principle of good administration of justice, as the ambiguities of this principle – outlined in Section 3 – would paralyze the mechanisms concerning third-parties.

If the procedure concerning *amicus curiae* submissions appears more directed towards an employ of good administration of justice as a flexible standard of adaptation to substantive law, this is mostly because this phenomenon has developed before human rights courts and common interests, as well as *erga omnes partes* obligations, are typical traits of international human rights law. Nevertheless, international law is seeing a development towards multilateralism as well as disputes concerning the interests of the international community as such.* The high number of requests for intervention presented and granted in *Ukraine v Russia*, as well as the increase in cases brought by indirectly injured States* – the latest application being that of Canada and The Netherlands against Syria* – show that international procedural law is facing new challenges with regard to the presence of third-party interests in international litigation. It is exactly in this context that the proposed characterization of the principle of good administration of justice can find fertile ground.

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*77 Whaling in the Antarctic (Australia v Japan) Separate opinion of Judge Cançado Trindade (n 7) para 68.


*81 Application of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Canada and the Netherlands v Syrian Arab Republic) (Joint Application instituting proceedings) 2023 <www.icj-cij.org/sites/default/files/case-related/188/188-20230608-APP-01-00-EN.pdf>. 
What is good for the administration of justice

5. Conclusions: Openness to third parties as a requirement of good administration of justice

The previous Sections showed that good administration of justice frequently guides the exercise of international adjudicative bodies’ margin of discretion on procedural matters. The recourse to this principle, however, can be problematic in light of the inevitable ambiguities deriving from such a broad concept.

An effective solution to these issues could be reading the principle in question as proposed in the introduction. Good administration of justice cannot be expected to offer clear procedural directions. However, if the solution proposed above is accepted, to offer clear directions is not the function of this principle. Instead, if the principle is intended as a standard of adaptation of procedural law to the novelties of substantive law, then it is apt to offer to international courts and tribunals the flexibility necessary to face many of the recent developments of international law.

This function of good administration of justice emerges in the rules concerning amici curiae submissions and is also appearing in the practice concerning third-party intervention, as well as in the other recent procedural developments outlined in Section 4. These are not, however, the signal of a sudden change in the procedural issues that come to light before international courts and tribunals. The explanation is much less sensationalistic and was clearly outlined by Thirlway:

‘it is evident that the output of a judicial body is determined by its input, and that the input is shaped, to a far greater extent than in the case of, for example, a political body, by exterior forces. […] A court decides what it is asked to decide; if therefore to an observer it appears that there is a trend discernible in the nature of the cases decided by it, this is usually because there was such a trend in the cases submitted to it. In this sense, a trend in jurisprudence is the reflection of a trend in society’.82

If substantive law is undeniably seeing a trend away from bilateralism and towards the inclusion within disputes of interests of a plurality of subjects as well as of the international community as a whole, it is not surprising that procedural law is following suit, although with a slight

delay. In this context, the principle of good administration of justice plays a key role, pulling international courts and tribunals towards a (hopefully) clear direction: the one best suited to encompass the evolution of substantive law.\textsuperscript{83} Seen in this light, a high number of requests for third-party participation like the one that has been seen in recent years would not cause particular worries. A proper consideration of good administration of justice, indeed, would allow to conciliate the existing procedural rules with the new necessities of substantive law, avoiding any harsh rigidity.

In sum, recent trends in third-party participation and the role that good administration of justice plays in the discussion on the admission of such requests confirm that this principle is the main tool in the hands of international courts and tribunals in order to constantly adapt their existing procedural rules to the complexities of an ever-evolving substantive law.

\textsuperscript{83} Kolb, ‘General Principles of Procedural Law’ (n 23) 890: ‘That principle allows (and requires) the Court to seek a constantly novel and constantly readjusted balance between the rights of the parties and the interests of justice’.