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Law, War and Letter Writing

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Abstract

When (some) international crises arise, it has become common for lawyers to respond by penning open letters that call out violations of international law and call on governments, international organizations or civil society to take a suite of actions. In this article, we argue that the prevalence of international law open letter writing means that open letters can now be viewed as a genre of international legal practice. Consequently, there is a need for international lawyers to attend more closely to the purposes, conventions and consequences of the practice. Drawing on open letters that were written in the first three months of the Russia-Ukraine conflict in 2022 and the first three months of the Israel-Gaza conflict in 2023, we argue that there are three main purposes embedded in these letters: advocacy, solidarity and public education. Throughout this article, we explore these purposes, consider their limits and possibilities and analyse how the letter writers seek to achieve them. We contend that, at present, international law open letters pursue advocacy, solidarity and public education in ways that are often narrow and with possible unintended consequences. We suggest that these limitations could be addressed through employing a broader array of open letter-writing modalities.

1 Introduction

Open letters are now a prominent feature of the international legal landscape. When (some) international crises arise, it has become common for lawyers to respond by penning open letters that call out violations of international law and call on governments, international organizations or civil society to take a suite of actions. International

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law open letter writing reached what seemed to be unprecedented levels when Russia invaded Ukraine in February 2022 and when renewed conflict broke out between Hamas and Israel in October 2023.[1]

The phenomenon of lawyers responding to international crises through open letters is not a new one. Open letters on international legal issues were published, for example, during the Vietnam War,[2] and groups of lawyers objected to the 2003 invasion of Iraq via open letters.[3] What does seem new, however, is the frequency, scale and level of participation in open letters on international legal issues. Gerry Simpson posits that international law is not 'merely a language by which we engage in or redescribe legal-diplomatic work' but, instead, 'what we do with words *is* the diplomatic work'.[4] Drawing on this line of thinking in the context of the growing prominence of international law open letters, we argue that these letters can be viewed as a genre of international legal practice.

There is a growing body of legal scholarship that explores traditional genres of international legal practice such as court proceedings, diplomatic negotiations and the meetings of international organizations.[5] As has been done with these established genres, lawyers need to grapple with questions about the why, when and how of open letter writing as a new genre of international legal practice. A handful of scholars have considered some aspects of open letter writing. For example, there has been analysis of the potential influence of open letters on policy makers,[6] the selectivity of the crises that lawyers write about,[7] the role of formalism in open letter writing[8] and the dominant role of legal expertise in public debates.[9] There are, however, more matters

1 Open letters have also been deployed in recent years to raise concerns about other international legal crises including the climate crisis, refugee crises and human rights abuses. Thanks to Arianna Bacic, Alexander Campbell and Catherine Marshall for their excellent research assistance in gathering the open letters and associated materials examined in this article.

2 M. Chiam, *International Law in Public Debate* (2021).

3 See Bernitz *et al.*, 'War Would Be Illegal', *The Guardian*, 7 March 2003, available at www.theguardian.com/politics/2003/mar/07/highereducation.iraq; Anton *et al.*, 'Howard Must Not Involve Us in an Illegal War', *The Age*, 26 February 2003, available at www.theage.com.au/national/howard-must-not-involve-us-in-an-illegal-war-20030226-gdvacj.html; also published as Anton *et al.*, 'Coalition of the Willing Make That War Criminals', *Sydney Morning Herald*, 26 February 2003, available at https://www.smh.com.au/national/coalition-of-the-willing-make-that-war-criminals-20030226-gdgbzy.html. More recently, Amia Srinivasan has provided personal reflections on open letter writing generally (not in a legal context) in our current moment. Amia Srinivasan, 'If We Say Yes: Campus Speech', *London Review of Books*, 23 May 2024, available at www.lrb.co.uk/the-paper/v46/n10/amia-srinivasan/if-we-say-yes.

4 G. Simpson, *The Sentimental Life of International Law: Literature, Language, and Longing in World Politics* (2021), at 19 (emphasis in original).

5 See M. Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* (2006); Simpson, *supra* note 4.

6 Charlesworth, 'Saddam Hussein: My Part in His Downfall', 23(1) *Wisconsin International Law Journal* (2005) 127.

7 R. Wilde, 'Hamster in a Wheel: International Law, Crisis, Exceptionalism, Whataboutery, Speaking Truth to Power, and Sociopathic, Racist, Gaslighting', *Opinio Juris* (17 March 2022), available at https://opiniojuris.org/2022/03/17/hamster-in-a-wheel-international-law-crisis-exceptionalism-whataboutery-speaking-truth-to-power-and-sociopathic-racist-gaslighting/.

8 Craven *et al.*, 'We Are Teachers of International Law', 17(2) *Leiden Journal of International Law* (*LJIL*) (2004) 363 at 370–371.

9 *Ibid.*, at 371.

to be considered. In this article, we build on the existing scholarship and ask some further questions about the genre of open letter writing in international law. For example, what is the purpose of writing open letters about international law? How do letter writers seek to achieve these purposes? Are they successful? And how might we consider some of the unintended consequences that flow from the ways in which letter writers pursue their goals?

For this article, we examined open letters on international law that were written in the first three months of the Russia-Ukraine conflict in 2022 and the first three months of the Israel-Gaza conflict in 2023. We argue that there are three main purposes embedded in these letters (either explicitly or implicitly) – namely, advocacy, solidarity and public education. Not all letters include all three purposes, but most contain a combination of at least two. Throughout this article, we explore these purposes, consider their limits and possibilities and analyse how the letter writers seek to achieve them. We contend that, at present, lawyers pursue advocacy, solidarity and public education in ways that are narrow and that have unintended consequences. We suggest that these limitations might be addressed if lawyers consider different modalities of writing open letters.

In section 2, we examine how authors have sought to deploy open letters for the purpose of advocacy. We examine two key issues within the letters from an advocacy perspective: the first concerns addressees and audience, and the second concerns matters of language and style. We outline some of the limitations of the current approaches to these issues and suggest ways for future letter writers to strengthen their advocacy efforts. Section 3 considers how the letters create and express solidarity with different communities, and we discuss the benefits and drawbacks of selective solidarity. In section 4, we argue that the pedagogical approaches currently adopted in international law letters are limited, falling primarily within what is known as a diffusionist/deficit model. This section explores how open letter writers could incorporate more democratic and dialogical approaches to letter writing and, in so doing, enhance the educative impact of their work.

A *A Brief Note on Open Letters and Terminology*

The open letter has a long history in the tradition of public debate.[10] While there is no singular definition of the term, a number of common traits can be identified. One frequent feature of open letters is that they have multiple audiences – some are named and, therefore, explicit; other audiences are implicit or can be assumed based on the content, style or place of publication.[11] Common audiences for open letters include individuals (usually in leadership roles), governing bodies and the general public.

[10] The history of open letters in modern times is often traced back to the Dreyfus Affair in the late 19th century when Emile Zola wrote an open letter entitled 'J'Accuse!'. Graminius, 'Conflating Scholarly and Science Communication Practices: The Production of Open Letters on Climate Change', 76(6) *Journal of Documentation* (2020) 1359, at 1364.

[11] Stanley, 'The Epistolary Gift, the Editorial Third-Party, Counter-Epistolaria: Rethinking the Epistolarium', 8 *Life Writing* (2011) 135, at 149.

Traditionally published in newspapers, magazines and journals[12] but increasingly appearing in online fora,[13] open letters are almost always meant to be seen by a broader audience, whether or not they are also addressed to a particular person or group. Another feature that many open letters share is that they tend to have authors who occupy 'a high status if not a pre-eminent position in relation to a particular community'.[14] Such authors usually have certain expertise and professional knowledge that imbues them with authority to speak on specific topics. Finally, open letters tend to share common purposes including, as we argue, advocacy,[15] solidarity[16] and public education.[17]

Throughout this article, we refer to the people who participated in the letters – either by drafting them or signing them – as 'lawyers', 'writers' and 'authors'. We use the term 'lawyers' rather than 'international lawyers' because, although most of the letters were written and signed by people with expertise in international law, some were written by lawyers whose practice or scholarship focuses on other fields of law, including domestic legal issues. We use the terms 'writers' and 'authors' interchangeably to refer to those who were involved in drafting the letters and those who signed the letters.

2 Advocacy

The first purpose of international law open letters that we examine is advocacy. Academics and lawyers have long engaged in advocacy work, particularly when directed at those in power. The British and Australian authors of the 2003 Iraq War open letters, for example, made protests and demands of their governments, arising out of their participation in the US invasion of Iraq.[18] Similarly, the advocacy contained in the Russia-Ukraine and Israel-Gaza letters almost always consisted of protests and demands. The entity whose actions were being protested was often a government, but letters were also written about the actions of international institutions and powerful individuals.[19] The open letters usually demanded identified courses of action that

[12] Stanley, 'The Epistolarium: On Theorizing Letters and Correspondences', 12 *Auto/Biography* (2004) 201, at 207.

[13] Stanley, 'The Death of the Letter? Epistolary Intent, Letterness and the Many Ends of Letter-Writing', 9 *Cultural Sociology* (2015) 240, at 242.

[14] Stanley, *supra* note 12, at 207; see also Nigel Willmott, 'Open Door', *The Guardian* (31 May 2010), available at www.theguardian.com/commentisfree/2010/may/31/problems-with-multi-signatory-letters.

[15] Graminius, *supra* note 10, at 1364; T. Geohegan and J. Kelly, 'Open Letters: Why Are They on the Increase?', *BBC News* (23 March 2011), available at www.bbc.com/news/magazine-12809682.

[16] Graminius, *supra* note 10, at 1366.

[17] Stanley, *supra* note 12, at 207.

[18] See Charlesworth, *supra* note 6; Craven *et al.*, *supra* note 8, at 363–374.

[19] See, e.g., M. Hussain *et al.*, *Open Letter Concerning Gaza*, 8 November 2023, available at https://open-letter.online (directed to the chief executive officers of the Law Society of England and Wales, the Bar Council and the Chartered Institute of Legal Executives). American Bar Association; *Letter to the Department of State and Department of Homeland Security Urging the designation of Ukraine for Temporary Protected Status*, 3 March 2022, available at www.americanbar.org/advocacy/rule_of_law/ukraine-response/blog/dept-of-state-letter/ (directed to the US Secretary of Homeland Security and the US Secretary of State).

would remedy the claimed violation(s) of international law. Advocacy in the Russia-Ukraine and Israel-Gaza letters was consistently expressed in formalist legal language, with some letters also deploying emotive language in parts of the letters.

In this section, we provide select examples of the advocacy of open letters in the Russia-Ukraine and Israel-Gaza contexts and consider two issues raised by that advocacy. First, the addressees and audience(s) for open letters and, second, the style and language of open letter advocacy. We argue that the dominant modes deployed in the Russia-Ukraine and Israel-Gaza letters, in relation to both addressees and audience, as well as style and language, have an inconsistent capacity to achieve their advocacy purposes. We argue that letter writers should have a greater attentiveness to questions of addressees and audience, and an openness to varied forms of style and language in open letters.

A *Examples of Advocacy: Protests and Demands*

Examples of protest in the Russia-Ukraine letters included those that condemned Russian aggression in Ukraine as a 'watershed moment'[20] and an 'egregious'[21] violation of international law and as action that 'cast a shadow on hearts of people around the world'.[22] The same letters then cited the principles of international law that Russia had violated, sometimes in relatively lengthy fashion. Russian transgressions identified in the letters included violations of the prohibition on the use of force in Article 2(4) of the UN Charter and the rights to territorial integrity and self-determination as well as violations under other relevant treaties. In some cases, open letter authors argued that the standards against which Russian behaviour should be measured were both the positive rules of international law and a higher principle of an 'international rule of law'.[23] Some Russia-Ukraine letters also protested that Russia's attempts to justify the invasion were a 'perversion' of international law.[24] The president and Board of the European Society of International Law, for example, called out the Russian humanitarian intervention pretext as 'a cynical and perverse use of international law',[25] and

[20] International Bar Association, *IBA Condemns Russia's Invasion of Ukraine*, 24 February 2022, available at www.ibanet.org/iba-condemns-russias-invasion-of-ukraine.

[21] Council of the Law Society of Scotland, *Resolution on Ukraine and International Rule of Law*, 4 March 2022, available at www.lawscot.org.uk/news-and-events/law-society-news/resolution-on-ukraine-and-international-rule-of-law/.

[22] Daini Tokyo Bar Association, *Daini Tokyo Bar Association Chairman Statement against Russia's Invasion of Ukraine, Calling on the Japanese Government to Make Diplomatic Efforts and Provide Humanitarian Assistance*, 3 March 2022, available at https://niben.jp/news/news_pdf/EnglDain.pdf.

[23] See Conseil d'Administration de la Société Québécoise de Droit International, *Déclaration du Conseil d'Administration de la Société Québécoise de Droit International*, 25 February 2022 (on file with the authors), *ILA Statement on the Ongoing and Evolving Aggression in and against Ukraine*, 3 March 2022, available at https://www.ilaparis2023.org/wp-content/uploads/2022/03/Statement_on_Situation_in_Ukraine_FINAL_0322.pdf.

[24] J. Trahan, *Global Institute for Prevention of Aggression Statement on the Situation in Ukraine*, 24 February 2022, available at https://crimeofaggression.info/wp-content/uploads/GIPA-Statement_-Situation-in-Ukraine-24-February-2022.pdf.

[25] President and Board of the European Society of International Law, *Statement by the President and the Board of the European Society of International Law on the Russian Aggression against Ukraine*, 24 February 2022, available at https://esil-sedi.eu/wp-content/uploads/2022/02/20220224_Statement-ESIL-Board.pdf.

the German Society of International Law insisted that 'the language of public international law is being deliberately misused by Russia' to create 'sham arguments'.[26]

Unlike the Russia-Ukraine letters, where the vast majority of letters condemned Russia's actions,[27] the letters for Israel and Gaza were divided in their support. The Israel-Gaza letters either condemned the actions of Israel or Hamas, or they condemned both parties as having violated international law. Within those formats, the letters followed similar patterns of protest and demand. The terms of the protests in the Israel-Gaza letters included descriptions of Hamas' attack on Israel on 7 October as 'horrendous',[28] 'heinous'[29] and 'ghastly acts of barbarism',[30] while Israel's military action in Gaza since 7 October was described as 'dire',[31] 'catastrophic'[32] and 'genocidal'.[33] The legal arguments made in the Israel-Gaza letters included accusations that Israel, Hamas or both had committed genocide, war crimes and crimes against humanity and were failing to uphold other international law obligations, including those arising from international humanitarian law, international criminal law, the law of occupation, the right to self-determination and human rights law.

Some letters also relied on the language of the 'rule of law', arguing that the application of the rule of law supported their positions on Israel, Gaza or both.[34] One open letter distinguished the international status of Israel and Hamas, arguing that Israel 'must be held to higher account' as a 'civilised and democratic state' than Hamas, with its 'terrorist origins'.[35] A further difference between most of the Russia-Ukraine letters and the Israel-Gaza letters is the number of letters that also became a battleground

[26] German Society of International Law, *Statement on the Russian Attack on Ukraine*, 24 February 2022, available at https://dgfir.de/society/.

[27] A notable exception was the Statement of the Presidium of the Russian Association of International Law, *Statement of the Presidium of the Russian Association of International Law*, 7 March 2022, available at www.ilarb.ru/html/news/2022/7032022.pdf.

[28] Van Aaken *et al.*, *Public Statement by International Law Experts*, undated, available at https://docs.google.com/forms/d/e/1FAIpQLSd4lrsDRg3HbJqoAf0BlAe7BHJuzpQB_Le27Iureq9vpCoBkw/viewform?pli=1.

[29] International Bar Association (IBA), *IBA Condemns Hamas Attacks on Israel Which Represent a Clear Violation of Human Rights and Humanitarian Law and Urges for a Just Solution to Be Achieved between Israel and Palestine*, 11 October 2023, available at www.ibanet.org/IBA-condemns-Hamas-attacks-on-Israel-which-represent-a-clear-violation-of-human-rights-and-humanitarian-law-and-urges-for-a-just-solution-to-be-achieved-between-Israel-and-Palestine.

[30] Alex Kaufman and Global Lawyers for Israel, *Leading Lawyers from around the World Publish Statement Condemning Terrorism in Israel*, undated, available at www.ipetitions.com/petition/global-lawyers-condemn-terrorism-in-Israel.

[31] International Law Association Albanian Branch, *Statement about the Escalation of the Israeli-Palestinian Conflict since 7 October 2023*, 11 November 2023, available at https://www.ila-hq.org/en_GB/documents/statement-palestine-president-albanian-ila-branch-11nov2023.

[32] B. Fee *et al.*, *UK Lawyers Letter*, 26 October 2023, available at https://lawyersletter.uk/wp-content/uploads/2023/10/GAZA_LETTER.pdf.

[33] UniMelb for Palestine Action Group, *Open Letter: Statement of Solidarity with Palestine and Call to Action from the University of Melbourne's Staff, Students and Alumni*, 2 November 2023, available at https://overland.org.au/2023/11/open-letter-statement-of-solidaarity-with-palestine-and-call-to-action-from-the-university-of-melbournes-staff-students-and-alumni/.

[34] See, e.g., IBA letter, *supra* note 29; Hussain *et al.*, *supra* note 19.

[35] Hussain *et al.*, *supra* note 19.

for establishing the 'facts' that underpinned the legal claims.[36] The Israel-Gaza letters moved beyond recitations of international law and included lengthy details about the situations in Gaza and Israel to support their legal arguments. A consideration of the role of open letters in establishing or debating facts is beyond the scope of our analysis here. We note only that scholarship on scientific facts argues that facts are constructed and contested; a position that resonates with the arguments we make in the sections that follow about how international law works in open letters.[37]

The demands of open letters were numerous and wide-ranging, calling on entities to do, or refrain from doing, different things. These demands usually included calling on the specific parties to comply with relevant international legal standards, to engage in the peaceful resolution of the dispute, to impose sanctions or other forms of legal responses and, in doing so, to affirm their commitment to international law. Open letters sometimes contained more precise demands. The Lauterpacht Centre's Ukraine letter, for example, listed four obligations of states, including 'to cooperate to bring to an end the unlawful situation by imposing lawful sanctions', to protect the victims, not to render aid to the aggressor and not to recognize Russian claims of sovereignty over Ukraine territory.[38] In the Israel-Gaza context, the International Association of Democratic Lawyers called for 'an immediate and complete weapons embargo' and a 'worldwide campaign [of] boycott' on Israel,[39] and the International Bar Association demanded 'the immediate and safe return of all hostages taken into Gaza' and the 'unhindered provision of humanitarian aid to civilians throughout the Gaza Strip'.[40]

The examples outlined in this section provide an overall sense of how their authors crafted the advocacy of the open letters we have examined. We turn now to our arguments about addressees and audience, and style and language.

B *Addressees and Audience*

Open letters are generally aimed at both expert and non-expert audiences. Open letters with an advocacy purpose can have specific addressees, particularly when they are protesting the actions of, or making demands on, a government, institution or individual. Letters may also be aimed at a broader, if silent, community of readers,

[36] Compare, e.g., Fee *et al.*, *supra* note 32; G. Rose *et al.*, *Australian Lawyers Reply*, 3 December 2023, available at www.lawyersreply.au. Most of the Russia-Ukraine letters did not enter into factual disputes. A key exception emerged in the Statement of the Presidium of the Russian Association of International Law, *supra* note 27, which sets out a number of facts that differ from those presented in other Russia-Ukraine open letters.

[37] See, e.g., S. Jasanoff (ed.), *States of Knowledge: The Co-Production of Science and the Social Order* (2006).

[38] E. Benvenisti *et al.*, 'Statement of Fellows at the Lauterpacht Centre for International Law', *Twitter* (2 March 2022), available at https://twitter.com/EBenvenisti/status/1498878067372142593; see also German Society of International Law, *supra* note 26; Jagiellonian Law Society, *Statement on the Situation in Ukraine*, 28 February 2022, available at https://nysba.org/app/uploads/2022/03/JLS-statement-re-Ukraine-final-gram-1.pdf.

[39] International Association of Democratic Lawyers, *IADL Statement: Support the Palestinian People, Call for International Actions against Israeli War Crimes*, 11 October 2023, available at https://iadllaw.org/2023/10/iadl-statement-support-the-palestinian-people-call-for-international-action-against-israeli-war-crimes/.

[40] International Bar Association, *Israel/Gaza: IHAHRI Calls for Adherence to International Law*, 2 November 2023, available at www.ibanet.org/Israel-Gaza-IBAHRI-calls-for-adherence-to-international-law.

especially if the authors aim to galvanize a wider public. For many open letters, the wider community of readers might in fact be the primary intended audience and the reason for the 'openness' of the letter.[41] Open letters are thus distinguished from other genres of legal advocacy, which are generally aimed at expert audiences in specific institutional contexts, because of their combination of expert and non-expert audiences, all of whom are being addressed publicly. Targeting and reaching these multiple audiences through the genre of open letters raises a number of complexities, which we consider in this section through our reading of the Russia-Ukraine and Israel-Gaza letters.

Some of the open letters we examined had named addressees and demands that were linked to the authority of those addressees. A number of the Israel-Gaza letters were framed in this way, for example, including the UK Lawyers Letter, which was directed to the UK prime minister, foreign secretary and defence secretary, and the letter from the Iranian Center for International Criminal Law, which was addressed to the prosecutor of the International Criminal Court.[42] Many of the open letters we examined, however, were not addressed to anyone. In the broader genre of open letters, the lack of an identified addressee is not necessarily unusual.[43] There are limits though to the potential impact of the advocacy of open letters that are addressed to no one. This is especially so where the letters have no addressee, and yet contain protests or demands that appear directed at a foreign government or an international institution. In these letters, the absence of addressees makes it unlikely that any intended targets will see the letter. It also enables the intended addressees of open letters to ignore the protests and demands within the letters, particularly where they have no relationship of accountability with the signatories.[44] If the identity of any implicit addressee matters for the advocacy of the letter, then the absence of an addressee potentially undermines the letter's impact.

As we have noted, it is of course possible that letter writers did not address their open letters to any specific individuals because they primarily wanted to engage a wider public audience.[45] This then gives rise to the question of whether the letters reached their intended public audience. Of significance here are the places where the letters were published. Most of the open letters we reviewed were published in

41 Stanley, *supra* note 11, at 149.

42 Fee *et al.*, *supra* note 32; Iranian Center for International Criminal Law, *Call for Urgent Action and Expediting Investigation into Serious Crimes against the Palestinians*, 20 October 2023, available at http://icicl.org/files/ICICL%20Open%20Letter%20to%20ICC%20Proseuctor%20on%20Gaza.pdf.

43 Some letters were addressed to specific individuals. See, e.g., the New York City Bar Association letter 2022 addressed to President Joe Biden, among others. New York City Bar Association, *Regarding United States Assistance to the International Criminal Court for Russian War Crimes*, 3 May 2022, available at https://s3.amazonaws.com/documents.nycbar.org/files/20221036-UkraineRussiaICCLetter050322.pdf; see also *Open Letter to the Assembly of States Parties Regarding the ICC Office of the Prosecutor's Engagement with the Situation in Palestine*', 9 December 2023, available at https://law4palestine.org/open-letter-to-the-assembly-of-state-parties-regarding-the-icc-office-of-the-prosecutors-engagement-with-the-situation-in-palestine/.

44 See, e.g., Rodden, 'The Intellectual as Critic and Conscience', 56 *Midwest Quarterly* (2014) 88.

45 This holds true not just for advocacy purposes but also applies where authors were wanting to cultivate solidarity or educate the general public.

specialist or discipline-specific online forums: on the websites of the institutions and societies under whose banner the letters were written, on independent web-hosting pages or as blog posts on specialist online outlets. The open letters were usually also disseminated through multiple channels, including private and public email lists, social media networks and international law blogs. It is unclear what capacity there is for discipline-specific online outlets such as these to reach general audiences beyond the discipline, particularly if there is little publicity for the open letter beyond the place of publication and a few social media mentions. While theoretically accessible by the general public, discipline-specific platforms are not typically directed at general audiences, and social media platforms have variable reach.

Letters published in newspapers or magazines (online or hard copy) have the potential to reach the wider, non-expert, audience represented by the publications' readership.[46] In so doing, they also create the possibility for the advocacy to have impact. In 2003, for example, the open letter to the Australian government protesting Australia's participation in the Iraq War was published in a mainstream news outlet.[47] This letter generated significant media interest and was a driver for the public release of the government's legal advice justifying the invasion of Iraq.[48] Some Russia-Ukraine and Israel-Gaza letters were published in newspapers (hard copy or online) or on the websites of independent media and magazine publications. It seems possible in these cases that, depending on the influence of the publications, such generalist outlets may have engaged audiences outside the discipline.

Our argument is not that open letters should follow a particular form of addressee in their construction or necessarily all be published in newspapers and magazines. In our view, open letters can and should take different forms, and this includes to whom they are directed and where they are published. Our analysis here arises out of our examination of the Russia-Ukraine and Israel-Gaza letters, where many letter writers appear not to have turned their minds to the questions of both the audience(s) for the letters and the capacity of the letters to reach those audiences. And our argument is that letter writers should be attentive to the questions of audience and reach when participating in those letters.

C *Language and Style*

There are not yet agreed practices for effective advocacy within international law open letters as there are in the genres of advocacy for diplomacy and in courts, for example. In theory, the 'openness' of the open letter form means that international law letters could be written in a multiplicity of languages and styles.[49] The examples we give earlier illustrate, however, that the vast majority of the Russia-Ukraine and Israel-Gaza letters relied on a formalist language and style for their advocacy. By this,

[46] Graminius, *supra* note 10, at 1364.

[47] Anton *et al.*, *supra* note 3.

[48] Charlesworth, *supra* note 6; Campbell *et al.*, 'Advice on the Use of Force Against Iraq', 4(1) *Melbourne Journal of International Law* (2003) 177.

[49] *Cf.* Simpson, *supra* note 4, at 35 (where he discusses the uniform style of international law journal articles).

we mean that the open letters used the language of positive rules of international law and framed that law as determinative of relevant legal issues.[50] Some of the letters also incorporated emotive language to convey their protests and demands. In this section, we consider the implications for the advocacy of open letters of using formalist and emotive languages and styles.

1 Formalist Language and Style

In their reflections on the public debates around the 2003 Iraq War, Matthew Craven and colleagues considered the contradictions arising from the formalism of their intervention in the public debate. Formalism was, for them, variously 'an obvious rhetorical tool'; a set of arguments that 'might ultimately come to undermine [their] political goals'; an approach that risked 'valorising the currency' of an international law that legitimates and resists oppression and violence; and a method that put in question their 'identity and solidarity as critical scholars'.[51] Over 20 years after the Iraq War open letters, the Russia-Ukraine and Israel-Gaza letters raise even more acutely questions about relying on formalism in open letters. Why do international lawyers adopt external-facing positions on the law that many would not adopt uncritically in internal disciplinary discussions? Are these always sincerely held views about the importance of both positive international law and an idea of an 'international rule of law'? Is the commitment to legal principle sometimes a 'tactical formalism' – a rhetorical tool aimed at supporting a specific legal or political goal? Or is it that, in the quest to 'do something' in the face of tragedy, international lawyers turn to their expert language in a belief that the language and their expertise holds persuasive power with specific audiences? Some letter authors undoubtedly chose to use international legal language because of sincerely held beliefs in the purpose and significance of international law. For others, we suggest, different factors are also relevant. Here, we consider three elements of the advocacy purpose of open letters and the formalist language that the letters adopt: the role of international law scholars as 'caretakers' of the international system, the expert persona of international law scholars and the question of tactical formalism.

Formalism in open letters can act to resist public perceptions that international law is merely the handmaiden to power. Saturating public debates with international legal language, including through open letters, has in the past pushed governments and institutions to deploy international legal language in public justifications for their actions.[52] Public justifications in the language of international law thus have a history of reinforcing the centrality of a state's commitments to the international legal system. For this reason, maintaining formalist language in open letters can insist upon

[50] M. Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960* (2001), at 500–501; see also J. D'Aspremont, *Formalism and the Sources of International Law: A Theory of the Ascertainment of Legal Rules* (2011); Desautels-Stein, 'Chiastic Law in the Crystal Ball: Exploring Legal Formalism and Its Alternative Futures', 2 *London Review of International Law* (*LRIL*) (2014) 263.

[51] Craven *et al.*, *supra* note 8, at 371.

[52] This is what happened in the Iraq War debates. See, e.g., Chiam, *supra* note 2; Knox, 'International Law, Politics and Opposition to the Iraq War', 9 *LRIL* (2021) 169; C. Peevers, *The Politics of Justifying Force: The Suez Crisis, the Iraq War, and International Law* (2013).

the 'lawness' of international law in public domains, which, in turn, gives persuasive weight to the legal positions advocated in the open letter. Richard Collins and Alexandra Bohm have argued that scholars have a particular responsibility in this regard. They propose that international law scholars act as 'caretakers' of the international legal system when they support public positions that 'uphold the (relative) autonomy of international legal practice'[53] and 'maintain in place the constitutive rules of the game itself'.[54]

The references to an 'international rule of law' in the letters we examined support the idea that some letter writers sought to preserve a public commitment of states to a system of law. Collins and Bohm's caretaker idea also helps to explain the Russia-Ukraine open letters that protested 'sham' or 'perverse' uses of international law.[55] This form of language allowed letter authors to position international law as having a point where arguments became 'juridically untenable'[56] and, thus, to assert the existence of a juncture where arguments in the language of international law were no longer 'legal' arguments but something else – political or moral stances, perhaps. Such boundaries of legal plausibility reinforced the autonomy of the international legal system through their insistence that law was different from politics and morality. This difference in turn strengthened the normative pull of the legal claims – states should comply with international law because it is law. In the context of the open letters, characterizing Russia's international legal defence of its actions as 'sham' arguments reinforced the significance of the legal claims because the open letters' arguments were 'law', while Russia's arguments were politics. In this way, the formalism in open letters may be a manifestation of the international lawyer's role as caretaker of the international legal system.

A second role for formalism in open letters is to emphasize the expertise of the letter writers and, thus, the authoritativeness of the legal positions advocated in the letters. Expertise in international law open letters has dual effects. As with all examples of expertise, open letters by lawyers carry the weight, persuasiveness and power of their disciplinary expertise.[57] In addition, the formal position of international law scholars under the Statute of the International Court of Justice as subsidiary sources of law means that open letters signed by the most highly qualified scholars have potential formal law-making power.[58] Consistently with the creation of international law, open

[53] Collins and Bohm, 'International Law as Professional Practice: Crafting the Autonomy of International Law', in J. d'Aspremont *et al.*, (eds), *International Law as a Profession* (2017) 67, at 91.

[54] *Ibid.*, at 91.

[55] President and Board of the European Society of International Law, *supra* note 25; German Society of International Law, *supra* note 26.

[56] German Society of International Law, *supra* note 26.

[57] See, e.g., D. Kennedy, *A World of Struggle: How Power, Law and Expertise Shape Global Political Economy* (2018); Lang, 'International Lawyers and the Study of Expertise: Representationalism and Performativity', in M. Hirsch and A. Lang (eds), *Research Handbook on the Sociology of International Law* (2018) 122; Uruena, 'International Law as Expert Knowledge: Exploring the Changing Role of International Lawyers in National Contexts', in J. d'Aspremont *et al.*, (eds), *International Law as a Profession* (2017) 389.

[58] Statute of the International Court of Justice 1945, 33 UNTS 993, Art. 38(1)(d). We distinguish here between letters authored by international law experts and letters in the language of international law that were authored by lawyers with a range of expertise. There were letters of both kinds among those we examined.

letters are more likely to make positive law if they have signatories who hold specific and relevant forms of disciplinary expertise and, second, if the letters are crafted in a way that conforms with authoritative articulations of international law – that is, if the letters are drafted in a formalist manner. For example, a letter alleging crimes against humanity will carry law-making power if those signatories include key thinkers on crimes against humanity and if the articulations of legal principle conform with expectations of advocacy in formal legal contexts, such as a court.[59] If open letters are directed at influencing an international legal body, a focus on positive law becomes not just an assertion of the expertise of the signatories but also a reminder that such expertise can make international law. This combination, in turn, may be persuasive to an expert audience that reads the letter. Some authors might even participate in open letters in the hope of advancing jurisprudence in the field.

As we noted earlier, some of the Russia-Ukraine and Israel-Gaza letters were signed by a mix of international law experts and lawyers with expertise in other fields.[60] This assortment of expertise suggests that the authority asserted by such letters did not arise from subject matter knowledge but, rather, from the status of the writers as lawyers *tout court*. The willingness of so many lawyers with little expertise in international law to sign open letters making doctrinal arguments about that law speaks to the power of international legal language in public domains. International legal language acted in the letters as the glue that brought disparate experts together and allowed them to frame their own concerns as concerns shared by the world. So while the formalist style allowed discipline experts to gesture to their potential law-making power, it also unified broader coalitions of lawyers – international and domestic – and underlined the more diffuse power of international law as a public language.

A third role for formalism in open letters is the idea of 'tactical formalism' – that is, employing positive rules of international law for short-term advocacy purposes because of a belief that they will be treated as authoritative by readers.[61] In conversations with some critical scholars who participated in Russia-Ukraine or Israel-Gaza open letters, it became apparent that they deployed formalist language in open letters for deliberate tactical reasons, notwithstanding their scepticism about it. These colleagues see the positive rules of international law as limited and flawed. Some believe that the rules bear some responsibility for the conditions that have given rise to the respective conflicts and question the capacity of international legal rules to enable the resolution of those conflicts. Others are critical of the structural bias within the positive rules of international law and, in particular, the rules' propensity to serve hegemonic interests.[62] However, they chose to employ formalism in their open letters

[59] *Ibid.*

[60] See especially Fee *et al.*, *supra* note 32; Rose *et al.*, *supra* note 36.

[61] We refer here to 'tactical formalism' and not 'strategic formalism' because tactics are focused on attaining short-term gains or reforms (winning a battle), while strategy is focused on longer-term goals that address structural issues in the system (winning the war). On this point, see Knox, 'Strategy and Tactics', 21 *Finnish Yearbook of International Law* (2009–2010) 193, at 197–198.

[62] Similar concerns were expressed by critical scholars who wrote open letters about the Iraq War. See Craven *et al.*, *supra* note 8, at 365–366.

because they believed that formalist presentations of international law are a pragmatic tool that can deliver important short-term gains.[63] Some hoped that invoking widely recognized international legal principles would ensure that their protests would be heard and demands heeded. Others believed that it was important to employ formalism as this allowed them to engage with the formalism of government lawyers and demonstrate where governments, in their views, were misconstruing or abusing international law. One critical scholar spoke of how 'there is merit in utilising flawed mechanisms of law if it is plausible that justice for oppressed peoples can become a focus of attention (and can sometimes lead to a successful outcome)'.[64]

The roles of caretaking, expertise and tactical formalism help to explain the predominance of a formalist style and language in open letters, but they do not answer whether formalism should be the style of open letters. Formalism, after all, defines events as legal problems with a public audience. This power of definition can foreclose opportunities for other approaches and outcomes.[65] When international legal language becomes the primary mode of debate, it displaces political, economic or other power inequalities that also govern an event.[66] This displacement may be considered a necessity in some circumstances – for example, where the authors are aiming for specific tactical deployments of international legal language. But there are risks in relying on international legal language in these ways. In some of the cases we examined, open letters that generated a response subsequently turned into a battle of competing legal opinions, weakening the persuasiveness of any of the legal arguments. This was what took place in Australia, for example, through the 'Lawyers Letter' and 'Lawyers Reply' on Gaza, where the suffering of the people of Gaza and Israel was transformed into a public tit-for-tat about proportionality, targeting and the protection of civilians, and the urgency of the claims in the letters was diminished.[67]

Arguments in the language of law are also more vulnerable to dismissal once the public framing of an issue becomes a matter of legal opinion.[68] In 2003, for example, on the eve of the Iraq invasion, the then prime minister of Australia responded to arguments that the invasion was illegal by saying: '[Y]ou know what lawyers are like … they do tend on occasions to argue.'[69] There is a further risk – particularly for critical legal scholars – that employing a formalist language and style in a tactical way may frustrate their interests in revealing the limits of formalism and how legal rules can

[63] These sorts of ideas were also explored by critical international law scholars after their intervention in the 2003 Iraq debates. See Craven *et al.*, *supra* note 8, at 363, 371.

[64] D. Williams, *Thoughts for the Day on Selectivity*, 5 January 2024 (email on file with the authors). The email correspondence concerned a letter being drafted to New Zealand government ministers requesting that New Zealand join South Africa's case at the International Court of Justice against Israel.

[65] See generally Uruena, *supra* note 57; Craven *et al.*, *supra* note 8.

[66] See Madelaine Chiam's argument about Australian public debate in the Iraq War. Chiam, *supra* note 2; see also Charlesworth, *supra* note 6.

[67] See *Australian Lawyers Letter re Gaza*, 8 November 2023, available at https://lawyersletter.au (which includes the original letter and the reply to the lawyers' reply); Rose *et al.*, *supra* note 36.

[68] See, e.g., Chiam, *supra* note 2; Knox, *supra* note 61; Peevers, *supra* note 52.

[69] Kerry O'Brien, 'Interview with John Howard', *ABC* (13 March 2003) (television interview).

be complicit in generating conflicts and a hegemonic world order. Robert Knox has written of how deploying international law rules in tactical ways legitimates those rules and forecloses the space for more systemic critiques to emerge.[70] If lawyers are always focused on the short term in open letter writing and rely solely on notions of tactical formalism, they risk never bringing the many important issues that critical scholars raise in their academic work into the public sphere.

2 Emotive Language and Style

As noted above, a significant number of the open letters combined gestures to positive law with more explicitly emotive, less formalistic, languages and styles.[71] In the case of the Russia-Ukraine conflict, this included letters that liberally deployed adverbs and adjectives referring, for example, to Russia's 'barbaric acts'[72] and 'intimidation' tactics[73] as well as the 'dark times'[74] enveloping the world. One characterized Russia's invasion as a 'tragedy, where monstrous evil appears in full view',[75] while others commended Ukraine's 'resilience'[76] and 'courage'.[77] In the Israel-Gaza conflict, letters lamented the 'unbearable spiral of violence of revenge whose immediate victims are civilians,[78] the 'unspeakable acts of mass terror' by Hamas',[79] the 'times of pain and terror' that the conflict fostered[80] and the authors' 'bewilderment' at 'dehumanising and racist discourses' about Palestinian people.[81] Some open letters used formatting tools to animate their texts. It was not uncommon in the Russia-Ukraine letters for words or clauses to be underlined, italicized, capitalized and/or placed in bold.[82]

70 Knox, *supra* note 61, at 208–211.

71 It is important to note, however, that there were some letters that were devoid of explicitly emotive terms. See, e.g., Canadian Branch of the International Law Association, *Statement of Concern about the Russian Invasion of Ukraine by ILA-CANADA*, 8 March 2022, available at www.ila-canada.ca/post/statement-of-concern-about-the-russian-invasion-of-ukraine-by-the-canadian-branch-of-the-internation.

72 G. Nice *et al.*, *Re: Condemnation of Unlawful Invasion of Ukraine by the Russian Federation* (*Goldsmiths Letter*), 2 March 2022, available at www.gold.ac.uk/media/docs/public-information/letters/Goldsmiths-Law-letter-on-Ukraine.pdf.

73 New York City Bar Association, *New York City Bar Association Condemns Attacks on Freedom of Expression, Opinion and Press in Russia and Ukraine and Urges Prompt Investigation*, 22 March 2022, available at https://s3.amazonaws.com/documents.nycbar.org/files/Statement_FoE_Russia-Ukraine_220322_Final.pdf.

74 Conseil d'Administration de la Société Québécoise de Droit International, *supra* note 23.

75 Nice *et al.*, *supra* note 72.

76 R. Turner, *Statement of American Bar Association President Reginald Turner Regarding Invasion of Ukraine*, 2 March 2022, available at www.americanbar.org/news/abanews/aba-news-archives/2022/02/statement-of-aba-president-reginald-turner-re-invasion-of-ukraine/.

77 W. Czapliński *et al.*, *Statement of Polish International Lawyers Concerning the Aggression of the Russian Federation against Ukraine*, 4 March 2022, available at http://przegladpm.blogspot.com/2022/03/stanowisko-polskich-prawnikow.html; Nice *et al.*, *supra* note 72.

78 E. Lagrange *et al.*, *Conflit au Proche-Orient: rappels à la loi des nations*, 30 October 2023, available at www.leclubdesjuristes.com/opinion/conflit-au-proche-orient-rappels-a-la-loi-des-nations-1227/.

79 Alex Kaufman and Global Lawyers for Israel, *supra* note 30.

80 D. Neuberger *et al.*, 'The Laws of War Must Guide Israel's Response to Hamas Atrocity', *Financial Times* (18 October 2023), available at www.ft.com/content/9f1b190d-c955-4381-a6f5-ab4a2bf1c32c.

81 UniMelb for Palestine Action Group, *supra* note 33.

82 See, e.g., Nice *et al.*, *supra* note 72; Council of Australian Law Deans Executive Committee, *CALD Executive Committee Statement: Responding to Humanitarian Crises – Upholding the Rule of Law and Respect for Human Rights*, 27 March 2022 (on file with the authors).

Employed well, emotion in legal writing can draw readers in and play 'indispensable roles in fixing and holding attention on a subject', which is essential for effective advocacy.[83] It can also assist with explaining nuances and generating greater understanding.[84] Indeed, letters that appear devoid of emotion[85] and reduce a conflict to technocratic advocacy about sovereignty, territory and treaty violations can suppress experiences, stories and complex affective states that help generate a fuller picture of a situation.[86] Emotive terms or expressive practices, however, are not necessarily an effective advocacy tool unless authors pay attention to what different emotional registers facilitate and what they obscure as well as whose voices they amplify and whose they drown out.[87]

One of the traps that lawyers are prone to when they employ emotion is that they only draw on a narrow range of emotions that fit within pre-existing, simplistic narratives.[88] It was particularly common in the open letters on both the Russia-Ukraine and Israel-Gaza conflicts to see classic fairy tale tropes replicated, with one side being cast as the villain and another as victim. The villain-victim narrative may well engender feelings of empathy and support for those cast as victims. But the reductiveness of this account misses much of the emotional complexity that exists for those embroiled in the conflict.[89] Further, it fits into a long history of scholars assuming they know and understand the perspectives and feelings of people in other parts of the world without attempts to engage with their lived experiences.[90] As L.H.M. Ling highlighted,

[83] Kidd White, 'Images of Reach, Range, and Recognition: Thinking about Emotions in the Study of International Law', in S. Bandes *et al*., (eds), *Research Handbook on Law and Emotion* (2021) 492, at 503.

[84] Emily Kidd White discusses how pain can serve 'epistemic functions, aiding our understanding of the situation we are confronting'. *Ibid*., at 504.

[85] We have said 'appear devoid of emotion' because, as Kidd White has identified, even though formalist legal language may lack explicitly emotive terms, it can still have an emotional impact on readers. *Ibid*., at 503. In the open letter context, formalist language can engender emotions of trust and confidence in readers as it plays into ideas that the law is rational, objective and authoritative.

[86] Gerry Simpson warns against the 'problems of dryness or technocracy' in all forms of international legal writing. Simpson, *supra* note 4, at 44.

[87] See generally *ibid*., at 30–54; Hutchinson and Bleiker, 'Theorizing Emotions in World Politics', 6 *International Theory* (*IT*) (2014) 491, at 508.

[88] See generally Ling, 'Decolonizing the International: Towards Multiple Emotional Worlds', 6 *IT* (2014) 579; Simpson, *supra* note 4, at 45–47.

[89] For example, in the Russia-Ukraine letters, Ukraine was frequently cast as the victim and authors made assumptions about Ukrainians' 'courage' and 'resilience'. However, research suggests that 'Ukrainians have experienced a kaleidoscope of emotions since the escalated Russian invasion in February 2022' and that 'it may be complicated to define them accurately'. N. Steblyna, *Emotions of the War: What Does Tonality Analysis Say About Zelensky's Political Communications?*, 10 May 2022, available at https://ukrainian-studies.ca/2022/05/10/emotions-of-the-war-what-does-tonality-analysis-say-about-zelenskys-political-communications/. From the Russian perspective, polls taken during the conflict reveal that significant proportions of Russians have felt emotions such as anxiety, fear, dread, anger and pride in response to aspects of the conflict; none of which is reflected in the narratives conveyed in the letters. See, e.g., 'More Than Half of Russians Feel Anxious or Angry About Mobilisation, Poll Indicates', *Reuters* (30 September 2022), available at www.reuters.com/world/europe/more-than-half-russians-feel-anxious-or-angry-about-mobilisation-poll-indicates-2022-09-29/.

[90] Ling, *supra* note 88, at 580; McDermott, 'The Body Doesn't Lie: A Somatic Approach to the Study of Emotion in World Politics', 6 *IT* (2014) 557, at 561.

distilling emotions into a single narrative and shutting out the multiple emotional worlds that co-exist at any one time may well stymie efforts to resolve conflict.[91] This is because it becomes difficult to generate accord if people's feelings are not understood[92] and because the language used to describe a conflict can affect how societies come to understand and feel about that conflict.[93] This in turn can shape the actions that societies take in response to it.

There are risks too in a surplus of emotion being expressed in open letters. Employing emotive words such as 'tragedy' and 'barbaric' may well allow the authors (and perhaps the readers) to release the distress and fear engendered by a conflict and, in so doing, experience a form of catharsis. However, as Simpson has noted, there is a danger that emitting a surplus of emotion may 'have the effect of only moving us to tears but never to action'.[94] At the same time, and somewhat contradictorily, there is a risk that an excess of emotion may lead to responses that go too far the other way; rather than inaction, we may get too much action or inappropriate forms of action. We see this when, fuelled by outrage and fear, the authors of the Goldsmiths letter, written in response to the Russia-Ukraine conflict, endorsed the idea that Vladimir Putin be 'brought to a swift and effective trial' with 'all the procedural and institutional limitations on prosecution to be swept aside'.[95]

Our call then is for letter writers to be more attuned to the use of emotion in open letters and its impact on their advocacy. Deployed well, emotion has an important role to play in advocacy efforts, but there is a need for consideration to be given to its myriad effects and the most appropriate ways to deploy it in different circumstances.

3 Solidarity

The second purpose of open letters in international law that we have identified and which we analyse here is solidarity. Some expressions of solidarity are evident through the very act of participating in the letters, and other expressions are apparent from the specific claims made in the text of the letters.[96] Both forms of solidarity were present in many of the Russia-Ukraine and Israel-Gaza open letters. In this section, we examine how the letters used international law to create solidarity with different groups and consider some of the consequences of when solidarity becomes selective.

[91] Ling, *supra* note 88, at 582.
[92] *Ibid.*, at 581–582.
[93] Rose McDermott talks about how emotions are socially contagious. See McDermott, *supra* note 90, at 559.
[94] Simpson, *supra* note 4, at 43–44.
[95] Nice *et al.*, *supra* note 72, at 2.
[96] A third form of solidarity, which proposes that solidarity is an international legal principle, is not present in the letters we examined. See, e.g., R. Wolfrum, *Solidarity and Community Interests: Driving Forces for the Interpretation and Development of International Law* (2021).

A *Solidarity with Whom?*

By and large, the letters we reviewed expressed solidarity towards two particular communities drawn from the various audiences at which the letters appeared to be aimed. The first community consisted of members of the public directly affected by the conflict. Writing in the wake of the Russian invasion of Ukraine, for example, the Lauterpacht Centre for International Law offered 'solidarity and assistance … to all the people impacted by this conflict'.[97] A letter from a group of Australian lawyers 'recognise[d] the pain and anguish of those who have been injured and lost loved ones' in the Israel-Gaza conflict.[98] In such letters, the authors were creating a connection to these communities by identifying with persons adversely affected by conflicts – sometimes on the other side of the world from the authors – via a claim of shared humanity. And by writing as lawyers, about international law, they were also asserting a right to express solidarity based on a belief in the universality of international law and its ability to protect that humanity. Claims framed in the language of international criminal law, in particular, sought to rely on the premise that certain crimes, due to their scale and gravity, 'shock the conscience of humanity' and 'threaten the peace, security and well-being of the world'.[99] Such solidarist language was used in the letters to affirm that the authors and the persons directly affected by the conflicts were all part of the same global community that, in their view, could and should be protected by international law. This was encapsulated in a letter of solidarity with 'the Ukrainian citizens' from the Hellenic Society of International Law and International Relations in which it declared that '[i]nternational law is what we, the peoples of the United Nations, decide it to be, what we take care to apply. Let's get our act together … and defend the world we wish to live in – in peace, coexistence, freedom, security and justice'.[100]

The second community to which expressions of solidarity were aimed was the community of international lawyers. Particularly notable in many of the Ukraine-Russia letters were specific expressions of solidarity 'with our Ukrainian colleagues'[101] or 'with all members of the community of international lawyers in Ukraine'.[102] Some of these letters were written in response to direct appeals for solidarity from Ukrainian international lawyers. On the first day of Russia's invasion, for example, the Ukrainian

[97] Benvenisti *et al.*, *supra* note 38.

[98] Rose *et al.*, *supra* note 36.

[99] Rome Statute of the International Criminal Court 1998, 2187 UNTS 3, preamble; see also M.M. DeGuzman, *Shocking the Conscience of Humanity: Gravity and the Legitimacy of International Criminal Law* (2020).

[100] Hellenic Society of International Law and International Relations and Hellenic Branch of the International Law Association, *Joint Statement*, 27 February 2022, available at www.ilahellenic.gr/joint-statement-by-the-hellenic-society-of-international-law-international-relations-and-the-hellenic-branch-of-the-international-law-association.

[101] European Federation for Investment Law and Arbitration, *Statement by the European Federation for Investment Law and Arbitration (EFILA) on the Russian Aggression against Ukraine* (2022), available at https://efila.org/wp-content/uploads/2022/03/EFILA-statement-against-Russian-aggression-DEF.pdf.

[102] Hungarian Branch of the International Law Association, *Declaration of Solidarity with Ukraine*, 14 April 2022, available at www.ila-hungary.hu/index.php/declaration-of-solidarity-with-ukraine.

branch of the International Law Association published an 'Appeal to Foreign Societies of International Law', asking them 'to do everything possible' to uphold and protect international law.[103] A small number of external international law societies then responded by acknowledging these calls for action in their own letters. A few Ukrainian international lawyers tweeted their appreciation of the solidarity expressed by the international legal community,[104] affirming that at least some of the letters fostered a measure of kinship and support for Ukrainian colleagues.

The letter writers' claims to solidarity with a broader, global, community of international lawyers can also be inferred by their very act of participating in the letters. As noted by Carin Graminius, 'a signatory process can be seen as a way to construct and reconstruct a community in the midst of varying practices and differentiated disciplines'.[105] We see this in those letters where international lawyers with divergent views of the discipline signed alongside one another.[106] In such instances, the signatories were declaring a unified community of 'scholars and practitioners of international law' in order to present a united front in the face of high-profile violations of international law.[107] Solidarity with the community of international lawyers was underpinned by a shared understanding of international law's conventions and language as well as a shared responsibility as caretakers of the international system (as discussed in section 2.C.1). To sign an open letter with one's peers cultivates a sense of belonging and disciplinary relevance.

For some writers – in particular, those scholars and lawyers who have long been involved in activism – open letters might be a natural continuation of their practice. For others, however, questions arise about selectivity in writing and signing letters to express solidarity.

Why *this* solidarity with *these* groups? Why *now*?

B *Selective Solidarity*

There has been broader critique of the West's reaction to the crises in both Ukraine and Gaza, with accusations of selectivity, hypocrisy, Eurocentrism and double standards

[103] O. Butkebych, *Ukrainian Branch of the International Law Association's Appeal to Foreign Societies of International Law*, 24 February 2022, available at www.uail.com.ua/appeal-to-foreign-societies-of-international-law/; see also Department of International and European Law of the National University of Kyiv-Mohyla Academy, *Address to Legal Academics Worldwide*, 25 February 2022, available at https://twitter.com/NaUKMA_PIL/status/1497473798202925059.

[104] See, e.g., I. Polovets, *Twitter* (24 February 2022), available at https://twitter.com/Irina_Polovets/status/1496498406822449154; National University of Kyiv-Mohyla Academy, *Twitter* (2 March 2022), available at https://twitter.com/NaUKMA_PIL/status/1498925393927098369.

[105] Graminius, *supra* note 10, at 1367.

[106] Third World Approaches to International Law Review, *Public Statement: Scholars Warn of Potential Genocide in Gaza*, 17 October 2023, available at https://twailr.com/public-statement-scholars-warn-of-potential-genocide-in-gaza/; K. Scott *et al.*, *Statement of Concern on the Conflict in Ukraine from Members and Supporters of the Australian and New Zealand Society of International Law*, 4 March 2022, available at https://anzsil.org.au/resources/Statement%20of%20Concern%20on%20the%20Conflict%20in%20Ukraine%20from%20Members%20and%20Supporters%20of%20the%20Australian%20and%20New%20Zealand%20Society%20of%20International%20Law.pdf.

[107] *Ibid.*

in media coverage and political responses.[108] The letters, too, were not immune from such critique. Ralph Wilde, for example, contended that the structural racism of the international legal system was laid bare by the quantity and content of the open letters on Ukraine.[109] In relation to atrocities committed in the Israel-Gaza conflict, over 400 legal practitioners in England and Wales signed a letter rebuking the leadership of their professional societies for taking a stand on Ukraine-Russia but staying silent on Israel-Gaza.[110] Other letters attempted to overcome the selectivity more implicitly by using the specific crisis as an opportunity to draw attention to issues not in the global spotlight. For example, the Victorian Aboriginal Legal Service published a 'statement in solidarity with Palestinians', drawing parallels between the systematic oppression of Indigenous Peoples in Australia and the 'colonial state violence' against Palestinians in Israel.[111] This letter served as a reminder of the long history of solidarity between Indigenous Peoples and Palestinians and their aligned struggles.[112] Less effective in addressing selectivity were letters like the one from the Council of Australian Law Deans on the Ukraine conflict, which appealed for 'co-ordinated action at the local, national and global levels' to avert humanitarian crises caused by the climate emergency and included references to Australian bushfires and floods.[113] Acknowledging an ad hoc collection of unrelated issues might have drawn attention to the problem of selectivity, but did little to resolve it.

In addition to the broader question of conflict selectivity – why this crisis and not others? – there are also issues of selectivity within the chosen conflict, exemplified by which communities received expressions of solidarity and which did not. For example, while the vast majority of Russia-Ukraine letters professed solidarity with the Ukrainian people and Ukrainian international lawyers, only a couple of letters included acknowledgement of Russian people and colleagues, and, on those occasions, solidarity was conditional. For instance, while the Law Society of England and Wales letter expressed unconditional solidarity to the Ukrainian people and legal professionals, a similar sentiment towards Russians was restricted to those 'who oppose their government's illegal invasion of Ukraine'.[114] Selectivity in such instances replicated the problem identified in the discussion of emotion in section 2.C.2, whereby the complex conflict dynamics were reduced to simplistic fairytale tropes of hero,

[108] M. Bayoumi, 'They Are "Civilised" and "Look Like Us": The Racist Coverage of Ukraine', *The Guardian* (2 March 2022), available at www.theguardian.com/commentisfree/2022/mar/02/civilised-european-look-like-us-racist-coverage-ukraine; W. Ahmad, 'The Mask Is Off: Gaza Has Exposed the Hypocrisy of International Law', *Al Jazeera* (17 October 2023), available at www.aljazeera.com/opinions/2023/10/17/the-mask-is-off-gaza-has-exposed-the-hypocrisy-of-international-law.

[109] Wilde, *supra* note 7; see also Knox, 'Imperialism, Hypocrisy and the Politics of International Law', 3 *Third World Approaches to International Law Review* (2022) 25.

[110] Hussain *et al.*, *supra* note 19.

[111] Victorian Aboriginal Legal Service, *VALS Statement in Solidarity with Palestinians*, undated, available at www.vals.org.au/wp-content/uploads/2023/12/VALS-statement-in-solidarity-with-Palestine33.pdf.

[112] See, e.g., Desai, 'Disrupting Settler-Colonial Capitalism: Indigenous Intifadas and Resurgent Solidarity from Turtle Island to Palestine', 50(2) *Journal of Palestine Studies* (2021) 43.

[113] Council of Australian Law Deans Executive Committee, *supra* note 82.

[114] Law Society of England and Wales, *Statement on Ukraine*, 1 March 2022, available at www.lawsociety.org.uk/campaigns/international-rule-of-law/tools/how-lawyers-can-show-support-for-people-in-ukraine.

villain and victim. All Ukrainians were considered worthy of solidarity because they were courageous victims of a 'monstrous evil'.[115] Russians were the villains, unless they heroically risked their lives to 'speak truth to power'.[116] Some letters cast international law in the role of hero[117] or even the authors themselves as 'frank and fearless' defenders of an international rule of law.[118] In the Israel-Gaza letters, the villain/victim dichotomy was also often apparent, but the question of who was cast in those roles was mixed. Depending on the viewpoint of the authors, either Israel was the villain and Palestinian citizens were the victims or Hamas was the villain and Israel and Israelis were the victims. The conviction with which so many Israel-Gaza letters expressed their positions laid bare a stark selectivity as to which communities directly affected by the conflict received the authors' solidarity.

The divisions evident in many of the Russia-Ukraine and Israel-Gaza letters may not always be problematic in and of themselves. Indeed, for many signatories, the selectivity of their solidarity may precisely be the point. We do not diminish the importance of deliberate selective expressions of solidarity in open letters. Our argument here is that, where open letters take a position that leaves no room for common ground, there is a risk of creating a level of antagonism that can lead to entrenched positions. For example, many of the letters professing solidarity with opposing sides in the Israel-Gaza conflict did not recognize common ground, preferring to narrate different histories and different ideas about the application of international law with little attempt to seek some sort of pathway forward. Such antagonism can lead to views in which the other side is 'demonised, excluded or even destroyed'.[119] While there may very well be a place for antagonism in some advocacy work, there are other ways of navigating divisive issues that are less hostile. For example, it may be helpful to think about the divisions that arise in these conflicts through the prism of 'agonism', which refers to a contestation 'between adversaries that share a common political space, but want to organise it very differently'.[120] Agonism recognizes that authors with opposing views on the conflicts can accept that those views are irreconcilable, while still recognizing the legitimacy of their opponent(s).[121] An agonistic relationship, therefore, opens the way for disagreements to be aired, different perspectives to be offered and commonalities discovered that could potentially provide the foundation for resolving tensions.

Agonism may also be a way to understand divisions among peers within the discipline of international law. Participation in open letters to signal solidarity can create intra-disciplinary camps, indicating clearly who the authors think their friends are.

[115] Nice *et al.*, *supra* note 72.
[116] President and Board of the European Society of International Law, *supra* note 25.
[117] See, e.g., Neuberger *et al.*, *supra* note 80.
[118] Council of Australian Law Deans Executive Committee, *supra* note 82; Council of Bars and Law Societies of Europe, *CCBE Statement on the Invasion of Ukraine*, 25 February 2022, available at www.ccbe.eu/fileadmin/speciality_distribution/public/documents/Statements/2022/EN_20220225_CCBE-Statement-on-Ukraine.pdf.
[119] Ritchie, 'A Contestation of Nuclear Ontologies: Resisting Nuclearism and Reimagining the Politics of Nuclear Disarmament', *International Relations* (2022) 1, at 14.
[120] *Ibid.*, at 14.
[121] C. Mouffe, *On the Political: Thinking in Action* (2005), at 20.

Questions naturally arise in relation to who has signed which letter(s), who has not signed and why, which community/ies they are supporting and how they are using international law. Where division among colleagues remains agonistic, it provides space for 'empowering a wide range of perspectives and voices and enabling robust critique that challenges prevailing assumptions'.[122] But the kind of team making that we have seen with some open letters in international law can quickly become antagonistic, cementing disciplinary, ideological and political divisions. In some cases, claims to solidarity in open letters can be read or deployed as a form of virtue policing, which, in turn, can hinder discussions about the issues raised in the letter. At worst, these divisions may become genuinely corrosive and can have broader professional and personal consequences for authors.[123]

4 Public Education

A third purpose of open letters in international law that we have identified is to educate the public about the international legal issues at play in the respective conflicts and explain how international law might guide responses to the crises. In this section we begin by explaining how the goal of educating the public can be seen in the Russia-Ukraine and Israel-Gaza letters. We then explore how the main pedagogical approach adopted by the letter writers fits within a relatively restrictive teaching paradigm: the diffusionist/deficit model. After setting out some of the limitations with this model, we consider how efforts to educate the broader community about international legal issues in conflicts could be strengthened by letter writers employing dialogical and democratic models of pedagogy and paying more attention to the audiences for whom they are writing.

A *The Public Education Purpose of Open Letters*

Informing the public about key concepts and ideas has always been a fundamental part of open letters whether they are from scientists, political scientists, lawyers or other disciplinary experts.[124] In the Russia-Ukraine and Israel-Gaza letters, the desire to educate a lay audience was apparent from how the letter writers set out fundamental

[122] Ritchie, *supra* note 119, at 14.

[123] G. Cohen, *Israel-Hamas War Inflaming Tensions in Canada's Legal Profession*, 9 November 2023, available at www.law.com/international-edition/2023/11/09/israel-hamas-war-inflaming-tensions-in-canadas-legal-profession/; D. Thomas, 'Divisions Mount over US Law Firms' Response to Israel-Hamas War', *Reuters* (15 November 2023), available at www.reuters.com/legal/legalindustry/divisions-mount-over-us-law-firms-response-israel-hamas-war-2023-11-14/.

[124] Stanley, *supra* note 12, at 207. Note too that the idea that open letters have an educative purpose was apparent from the title that Craven *et al*., *supra* note 8, gave to their 2004 article reflecting on the experience of writing an open letter on the Iraq War, 'We Are Teachers of International Law'. The idea that lawyers, and, in particular, international lawyers, have a role in educating the public about international law and its application to real world events (both via open letters and other means) is one that has a long history. See, e.g., Root, 'The Need of Popular Understanding of International Law', 1 *American Journal of International Law* (1907) 1; Rose, 'International Lawyers as Public Intellectuals and the Need for More Books', 28(3) *LJIL* (2015) 393, at 393.

international law principles (for example, about the use of force, self-defence, international humanitarian law and international criminal law) in relatively plain, simplified terms and made claims about how these principles had or had not been violated. For example, the New York City Bar Association issued a letter about Russia's invasion of Ukraine and described how the 'unprovoked initiation of a war and attack on the sovereignty and territorial integrity of Ukraine by the Russian Federation constitutes a clear violation of Article 2(4) of the Charter of the United Nations, which prohibits the "threat or use of force against the territorial integrity or political independence of any State"'.[125]

In the Israel-Gaza context, a group of Jewish lawyers writing in the *Financial Times* explained the relevance of international law to the actions of both Hamas and the Israeli government. They stated that Hamas' actions on 7 October constituted 'the most grave form of breaches of the Geneva Conventions'.[126] They then set out that 'Israel has a clear right in international law to respond [to the Hamas attack] in self-defence' and described how, 'just as international law provides the means for categorising and criminalising the barbaric acts of Hamas, so too does it provide a framework for governing how Israel must respond. Any nation, conducting any armed conflict, no matter what the provocation, is bound in law to comply with all the "laws of war"'.[127]

B *The Diffusionist/Deficit Approach to Public Education*

In our view, open letters have the potential to be a useful medium for conveying international legal knowledge to the general public. However, the model of education that was relied upon in many of the Russia-Ukraine and Israel-Gaza letters was a narrow one that limited the letters' pedagogical impact. Most of the letters employed forms of instruction premised on experts disseminating legal conclusions to a monolithic, passive public. In the literature on science communication, this approach to open letters has been labelled the diffusionist or deficit approach.[128] It assumes that the public is largely ignorant but will adopt the 'correct' position on an issue once experts have set out the requisite knowledge for them.[129]

There may be times when it is helpful for lawyers to adopt a diffusionist/deficit approach in open letters, including, for example, when there is a need to disseminate key factual information and legal principles.[130] However, science communication scholarship has warned against this approach being used as the exclusive mode of

[125] New York City Bar Association, *Russian Federation's Invasion of Ukraine*, 25 February 2022, available at https://www.nycbar.org/press-releases/russian-federations-invasion-of-ukraine/.

[126] Neuberger *et al.*, *supra* note 80.

[127] *Ibid.*

[128] Graminius, *supra* note 10, at 1361; Casini and Neresini, 'Behind Closed Doors Scientists' and Science Communicators' Discourses on Science in Society: A Study across European Research Institutions', 3(2) *Tecnoscienza Italian Journal of Science and Technology Studies* (2012) 37, at 38.

[129] *Ibid.*, at 38.

[130] For a discussion of how the diffusionist/deficit model is helpful in the science communication literature in similar ways, see Suldovsky, 'In Science Communication, Why Does the Idea of the Public Deficit Always Return? Exploring Key Influences', 25(4) *Public Understanding of Science* (2016) 415, at 418–422.

instruction when seeking to educate the general public because the approach contains a number of pedagogical limitations.[131] First, it is a paternalistic, top-down form of educating that gives experts a significant degree of power in shaping the public's understanding of the relevant issues and appropriate responses.[132] The diffusionist/deficit model positions the experts as all-knowing and assumes that they should be followed simply because of their titles and positions with no room for the audience to bring their own understandings into the mix or question the material with which they are presented.[133] Second, the science communication literature describes how the diffusionist/deficit model presents material as though it is objective and ignores complexities within it.[134] In the international law context, this means the approach presents the field as being objective, ignores international law's complicity in generating the conflicts and obscures its inherent ambiguities.[135] Third, in treating the public as an undifferentiated mass without considering the mix of backgrounds, views, knowledge levels and interests that exist within it, the model fails to appreciate that different sectors of the population may benefit from different forms of information and styles of communication.[136]

C *Addressing the Limitations with the Diffusionist/Deficit Approach to Public Education*

To address the first two limitations of the diffusionist/deficit approach, we can draw on the science communication literature, which has advocated for open letter writers to adopt more dialogical and democratic modes of letter writing.[137] Specifically, this scholarship encourages letter writers not to dictate what audiences should think but, rather, to leave room for them to form their own views.[138] In thinking about how lawyers might do this in open letters, pedagogical approaches deployed by legal academics may be useful. Many law teachers do not only set out key legal principles but also work to highlight the law's complexities and uncertainties, the significance of context when interpreting the law and the limitations inherent in legal approaches.[139] Further, they

[131] In the science communication context, Brianne Suldovsky suggests the deficit model should be seen as a 'necessary, though not sufficient, model for science communication'. *Ibid.*, at 422.

[132] Bucchi and Trench, 'Science Communication Research: Themes and Challenges', in Bucchi and Trench (eds), *Routledge Handbooks of Public Communication of Science and Technology* (2nd edn, 2014) 1, at 4.

[133] When writing about their Iraq open letter, Matthew Craven and colleagues expressed their qualms about letter writers assuming deficits in their audience and a special role for themselves. They questioned whether this approach risked 'reinforcing … the idea that justice is something you know, and furthermore knowledge to which we [international lawyers] have privileged access, as opposed to something that gets defined and redefined in the crucible of the social struggle?'. Craven *et al.*, *supra* note 8, at 370.

[134] Suldovsky, *supra* note 130, at 419.

[135] For a discussion of this occurring in the context of the Iraq letters, see Craven *et al.*, *supra* note 8, at 365–366, 371–372.

[136] The same issue emerges in science communication. Casini and Neresini, *supra* note 128.

[137] Bucchi and Trench, *supra* note 132; Graminius, *supra* note 10, at 1361.

[138] *Ibid.*

[139] Pedagogical approaches to international law vary across different jurisdictions and traditions. The approaches referred to here are found in particular in some western, common law states and are advocated for by Third World Approaches to International Law scholars. We have referred to them here because they are the approaches with which we are familiar. For a discussion of some of these approaches, see

strive to give students the tools to assess ideas and evidence. They encourage their students to think critically, understand the assumptions embedded within legal materials and come to their own conclusions about the merits and significance of legal arguments. Translating this to the open letter context could mean writing letters that explore tensions in the law on particular issues, explain the need for the public to interrogate key premises in relevant material and provide readers with questions they can consider when digesting international legal ideas.[140]

The dialogic elements of the democratic modes of letter writing also resonate with the practices of some international law teaching.[141] When teaching, some international law academics seek to engage students in discussions about the issues raised, think with them and encourage them to ask questions. In the open letter context, this dialogue might be achieved by letter writers fostering engagement with their readers by responding to readers' thoughts on social media or in follow-up letters.[142] Additionally, the publication of an open letter could be approached not as an isolated event but, rather, as an initial offering to start a conversation that is picked up in other public engagements, such as media interviews, townhall meetings, lectures, public debates and protests. Regarding the open letter as one element in a broader public dialogue would not only provide lawyers with opportunities to interact with their readers but may also create more spaces for them to explain the complexities of the legal issues with which they are grappling. Indeed, when reflecting on their experience with penning an open letter on the Iraq War, Craven and colleagues spoke of how they built on their initial views, and introduced more critical perspectives, when participating in subsequent panel discussions.[143]

To respond to the third limitation with the diffusionist/deficit model – an assumed monolithic audience – open letter writers could pay more attention to the audience(s) for whom they are writing and the places where they are publishing their letters, a step that would also address some of the audience concerns identified in section 2.A.2.[144] Rather than issuing open letters to the public at large, letters could be addressed and tailored to particular groups. Sometimes, the audience might be legally trained specialists (for example, members of the judiciary, legal officers in the

Al Attar, 'Must International Legal Pedagogy Remain Eurocentric?', 11 *Asian Journal of International Law* (2021) 176, at 190–193; Simpson, 'On the Magic Mountain: Teaching Public International Law', 10 *European Journal of International Law* (1999) 70; Jones and O'Donoghue, 'History and Self-reflection in the Teaching of International Law', 10(1) *LRIL* (2022) 71.

140 An open letter that did this effectively was one penned outside the international law context by Australian constitutional lawyers in the lead-up to the Voice referendum in 2023. S. Amjadali *et al.*, *Australian Public Law Teachers on What the Australian People Need to Know before They Vote at the Referendum*, 6 October 2023, available at www.documentcloud.org/documents/24013524-a-letter-from-public-law-teachers-about-the-voice.

141 Al Attar, *supra* note 139, at 190–193. For a discussion of dialogue in tertiary education generally, see Black, 'Dialogue in the Lecture Hall: Teacher-Student Communication and Students' Perceptions of Their Learning', 6(1) *Qualitative Research Reports in Communication* (2005) 31.

142 The science communication literature on dialogical and democratic modes of letter writing encourages letter writers on occasion to enter into correspondence with readers. Bucchi and Trench, *supra* note 132; Graminius, *supra* note 10, at 1361.

143 Craven *et al.*, *supra* note 8, at 369.

144 Casini and Neresini, *supra* note 128.

public service, international law associations or bar associations), and, in such cases, it would be appropriate to explore more nuanced, complex ideas about international law. At other times, efforts might be made to engage members of the public who have a special interest in the issue at hand, such as members of the diaspora from the areas affected by a conflict. Letters for this audience could acknowledge and build on specific understandings and concerns those audiences may have. Additional audiences might include young people, civil society organizations and company directors with business interests affected by the conflict.

With respect to the last group, companies are sometimes affected by conflicts because their operations are restricted by the imposition of sanctions on the states embroiled in the conflict. This was particularly apparent in the context of the Russia-Ukraine conflict where sanctions imposed by some Western nations circumscribed the activities of some companies in Russia.[145] Having specific information about the sanctions' regimes, including different perspectives on their purpose and utility, may be of interest and assistance to those affected by them. By selecting more specific audiences for open letters, lawyers would be able to think about what information is most important to convey to those audiences and the pedagogical styles and techniques that would be most helpful for engaging them. Connected to these points, and again picking up on the discussion from section 2.A.2, it might be helpful for letter writers to think about the places of publication that would be most likely to attract the attention of their particular target audiences.

Our argument in this section seems to ask a lot of the open letter's capacity to educate the public: how can we expect letters to set out key principles of law, offer critical perspectives and context, provide readers with tools to evaluate evidence and set out questions for the audience to consider? Our argument, however, is not that every international law open letter should seek to do everything. Rather, we want to encourage more diversity amongst open letters by getting letter writers to engage with the range of pedagogical approaches and tools available. Some letter writers may continue to put forward clear, succinct legal conclusions on particular issues. Some might present different perspectives on particular points of international law and set out tools that people can use to evaluate the arguments. Some might explain the complexities and uncertainties that surround the role of international law in a particular matter. And some might choose to combine several of these approaches to engage and inform the groups they wish to reach.

5 Conclusion

We have argued in this article that open letters are now a genre of international legal practice and that, as a consequence, lawyers need to attend more closely to how they engage in the genre. We have identified three purposes of the international law open

[145] See, e.g., H. Ziady, *The Risks Are Rising for Western Firms in Russia: So Why Are So Many Staying Put?*, 26 July 2023, available at https://edition.cnn.com/2023/07/26/business/western-firms-russia-explainer/index.html.

letters published in relation to the Russia-Ukraine and Israel-Gaza conflicts: advocacy, solidarity and public education. We have discussed some of the limitations in how open letters have attempted to achieve these purposes as well as a number of unintended consequences that have arisen from the pursuit of these goals. Throughout the article, we have offered ideas for different modalities that lawyers could consider when writing open letters to address the identified issues.

One objection to our call for lawyers to employ a wider array of approaches to open letter writing in international law could be that in times of crisis, lawyers need to send strong, unambiguous messages to ensure 'good' or 'right' outcomes are achieved. Voicing critical views, identifying legal uncertainties and worrying about selectivity might, in this objection, risk muddying the waters and cutting against the advocacy, solidarity and public education purposes that letter writers are pursuing. We are not convinced, however, that the effectiveness of open letters is undermined by acknowledging complexity. To the contrary, times of crisis may be precisely when more nuance, criticism and attention to ambiguity is needed in order to generate deeper understandings of the underlying dynamics of crises.

An alternative, or perhaps additional, response to this concern is that, even if many lawyers decide not to introduce complexity into open letters in times of crisis, we could perhaps consider crafting more letters outside of moments of peak crisis, when there is greater space and appetite for divergent perspectives and reasoning to be explored. Just as Hilary Charlesworth called in 2002 for international lawyers to engage with the international law of the everyday in our scholarship,[146] perhaps we could also engage the public with ideas about international law in everyday contexts. Doing so would create a deeper appreciation and knowledge of the discipline, which in turn might help to ensure that public debates on international legal matters during emergency settings are more sophisticated and better developed.

In this article, we have examined the purposes of open letters in international law because we understand them to now be an accepted genre of international legal practice and we are interested in the conventions of the genre. Our analysis is not intended to prescribe a particular formula for open letter writing in international law. Indeed, the multiple purposes of open letters are likely to give rise to incompatibility among the forms and modalities that we have discussed, and we do not suggest that these incompatibilities are easy to resolve. Our aim is not to reconcile any incompatibilities but, rather, to recognize them and consider their role in this genre. Our analysis also does not address a question that precedes the consideration of genre: should lawyers engage in open letters at all? Our view is that there are occasions when lawyerly interventions in the public sphere could take forms other than open letters, including opinion pieces, public meetings and other types of media or activist campaigns. There are also occasions when lawyerly reticence may be preferable to public interventions. Again, we do not suggest that these are simple questions to resolve. And we look forward to ongoing conversations about the genre and practice of open letter writing in international law.

[146] Charlesworth, 'International Law: A Discipline of Crisis', 65 *Modern Law Review* (2002) 377, at 391–392.