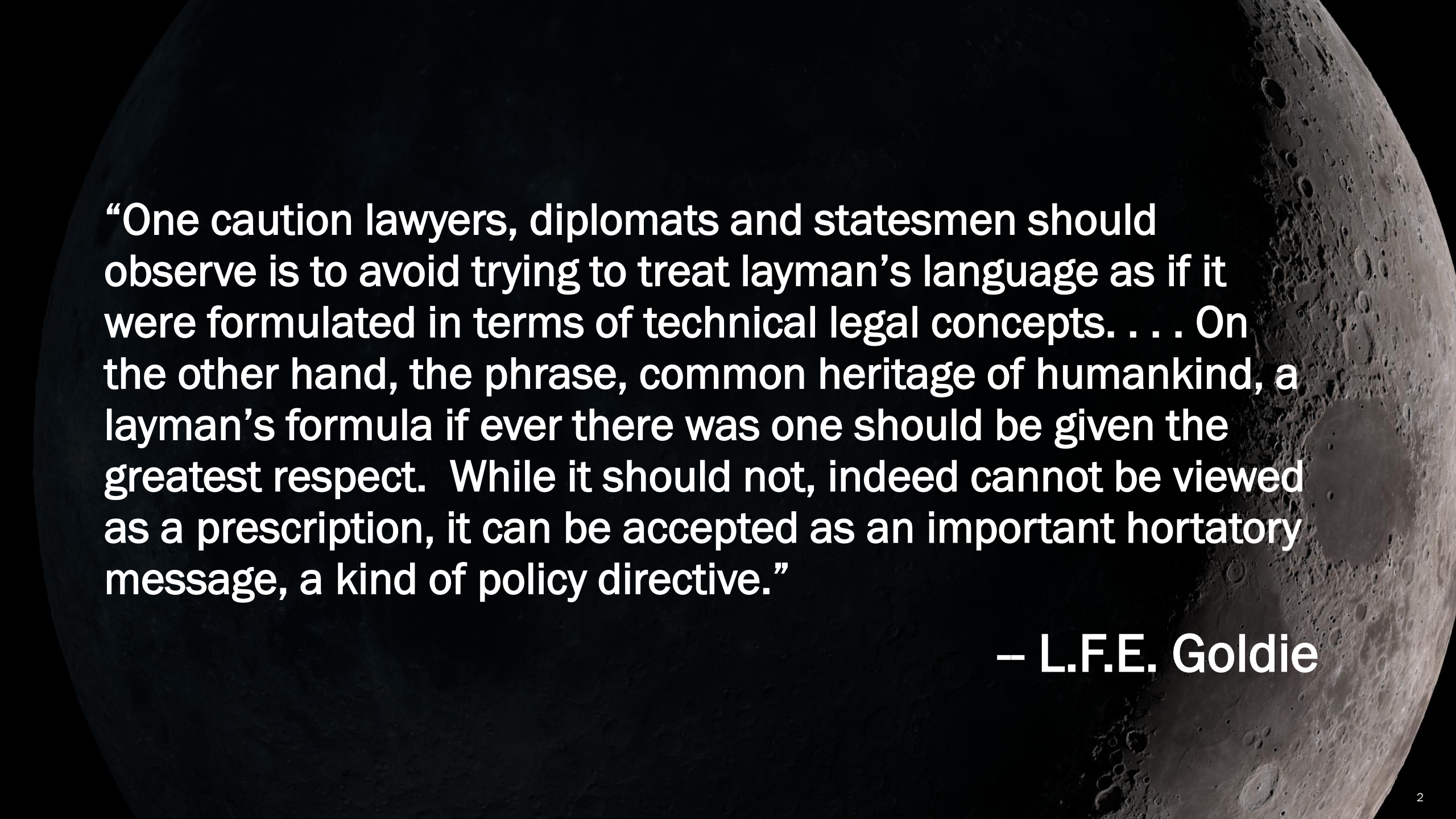




CHALLENGES FOR THE IMPLEMENTATION OF THE MOON AGREEMENT

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“One caution lawyers, diplomats and statesmen should observe is to avoid trying to treat layman’s language as if it were formulated in terms of technical legal concepts. . . . On the other hand, the phrase, common heritage of humankind, a layman’s formula if ever there was one should be given the greatest respect. While it should not, indeed cannot be viewed as a prescription, it can be accepted as an important hortatory message, a kind of policy directive.”

– L.F.E. Goldie

Challenges for Implementation

- 1) the unfortunate evolution of the political meaning attached to the words “common heritage of humankind,”
- 2) the comprehensive uncertainty that the Agreement propagates by not immediately enumerating a definition for purposes of the Agreement; combined with
- 3) careless and contradictory drafting that compounds ambiguity.

Article 1 (1)

- **The provisions of this Agreement relating to the moon shall also apply to other celestial bodies within the solar system, other than the earth, except in so far as specific legal norms enter into force with respect to any of these celestial bodies.**

Article 1(3)

- This Agreement does not apply to extraterrestrial materials which reach the surface of the earth by natural means.

Article 4(1)

- The exploration and use of the moon shall be the province of all [hu]mankind and shall be carried out for the benefit and in the interests of all countries, irrespective of their degree of economic or scientific development.

Article 6(2)

- . . . States Parties shall have the right to collect on and remove from the moon samples of its mineral and other substances. Such samples shall remain at the disposal of those States Parties which caused them to be collected and may be used by them for scientific purposes.

Article 7(2)

- States Parties shall inform the Secretary-General of the United Nations of the measures being adopted by them in accordance with paragraph 1 of this article and shall, also, to the maximum extent feasible, notify *him* in advance of all placements by them of radio-active materials on the moon and of the purpose of such placements.

Common Heritage of [Hu]mankind

- 1. the area is not subject to appropriation
- 2. all countries share in the management of the area
- 3. the benefits derived from exploitation of resources in the area must be shared with all regardless of participation
- 4. the area must be used for peaceful purposes; and
- 5. the area must be reserved for future generations.



A FATAL DISTORTION

Article 11(1)

- The moon and its natural resources are the common heritage of [hu]mankind, which finds its expression in the provisions of this Agreement, in particular in paragraph 5 of this article.

Article 11(5)

- **States Parties to this Agreement hereby undertake to establish an international regime, including appropriate procedures, to govern the exploitation of the natural resources of the moon as such exploitation is about to become feasible. This provision shall be implemented in accordance with article 18 of this Agreement.**

Article 11(7)

- The main purposes of the international regime to be established shall include:
 - *(a) the orderly and safe development of the natural resources of the moon;*
 - *(b) the rational management of those resources;*
 - *(c) the expansion of opportunities in the use of those resources;*
 - *(d) an equitable sharing by all States Parties in the benefits derived from those resources, whereby the interests and needs of the developing countries, as well as the efforts of those countries which have contributed either directly or indirectly to the exploration of the moon, shall be given special consideration.*

Article 11(3)

- Neither the surface nor the subsurface of the moon, nor any part thereof or natural resources in place, shall become property of any State, international intergovernmental or nongovernmental organization, national organization or nongovernmental entity or of any natural person . . .



WAY FORWARD

Lessons from Challenges

- Private and commercial entities must be invited to the negotiating table.
- Flexibility: Small regulator steps today, will reap far greater benefits in the future than a regime that penalizes the entrepreneurial exploratory spirit.
- Human village in space.
 - *Article 17 of the Universal Declaration of Human Rights recognizes the right of the individual to own property.*
- Balance
 - *Participation of civil society, including the NGOs, archaeologists, historians and scientists who can help us navigate the challenges of preserving our culture, carving out sites like the landing sites of Luna 2, the first human object to impact the Moon, Luna 9, humanity's first landing on the Moon, and Apollo 11, the site of humanity's first off-world footprint for recognition and protection.*



It is not just the concern that we are running out of space on Earth,

“but also . . . knowing what relations of propinquity, what type of storage, circulation, marking, and classification of human elements should be adopted in a given situation in order to achieve a given end.”

– Michel Foucault



THANK YOU

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