

## CALL FOR CHAPTERS: MALDIVES AND INTERNATIONAL LAW

Editors: Dr. Tamil Venthan Ananthavinayagan\*, Dr. Nizamuddin Ahmad Siddiqui\*\* and Mohd Imran\*\*\*

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Followed to two successful symposiums in 2022<sup>1</sup> and 2023<sup>2</sup> covering several aspects of Maldives engagement with International law, the Faculty of Shariah and Law, Villa College is pleased to announce call for book chapters for an edited volume – Maldives and International Law (*proposed title*).

Maldives, an archipelagic nation nestled in the Indian Ocean, has long been a focal point in international relations, owing to its strategic location and rich historical heritage. As we navigate the complexities of contemporary international law, understanding the Maldives' engagement with global legal frameworks becomes paramount. This book seeks to explore the multifaceted intersections between the Maldives and international law, shedding light on its historical evolution, contemporary challenges, and prospects.

### Scope:

We invite scholars, practitioners, and researchers to contribute chapters that delve into various aspects of the Maldives' relationship with international law. Submissions may address, but are not limited to, the following themes:

- Maldives Treaty Practice
- Judicial Invocation of International Law
- Territory - State Practice of Maritime Delimitation
- Natural Resources: Deep Sea Mining
- Maldives and International Environmental Law (Marine Protection, Biodiversity and Climate Change)
- Climate Change, Sea Level Rise - Land Reclamation
- LDC Graduation and WTO Challenges
- International Investment Agreements and FDI in Maldives
- Maldivian Approaches to International Commercial Arbitrations
- Maldivian Approach to Foreign Arbitral Awards
- Protection of Rights of Migrant Workers in Maldives: National and International Perspective
- Historical Roots and Evolution of International Trade in the Maldives

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<sup>1</sup> Ahmed, Asna and Imran, Mohd, Symposium on Decoding Maldives' Foreign Investment and Arbitration Law Regime (December 15, 2022). Available at SSRN: <http://dx.doi.org/10.2139/ssrn.4459169>;

<sup>2</sup> See comprehensive concept: Dr. Tamil Venthan Ananthavinayagan and Dr. Ahmed Shaheed (et al.), International Law and Maldives: Navigating Geopolitics, Trade and Sovereignty (20-21, December 2023) <https://doi.org/10.33774/coe-2024-gfg4w-v2>

- Sovereignty and Resistance: The Maldives' Response to Colonial Encroachments
- Islamic Legal Tradition and Its Influence on Maldives Reservation to Human Rights Treaties
- Maldives' Participation in International Bodies (UN/WTO/SAARC).
- Climate Change and Small Island States: Legal Challenges and Adaptation Strategies
- Arbitration Disputes and Legal Challenges in International Relations
- Transition from Commercial Diplomacy to Broader Foreign Policy: Implications for International Law
- Maldives Engagement with Non-alignment Movement
- The Maldives' Graduation from Least Developed Country Status: Legal and Economic Implications
- Maritime Delimitation and Sovereignty Issues in the Indian Ocean Region
- Investment Agreements, Treaties, and Tax Policies: Balancing National Interests and International Obligations

#### **Submission Guidelines:**

- Abstract (250-300 words) outlining the proposed chapter.
- Full chapters (6,000-8,000 words)
- Abstracts should be accompanied by a brief author biography (100 words).
- Abstract should be sent to [mohd.imran@villacollege.edu.mv](mailto:mohd.imran@villacollege.edu.mv) by 15 June 2024.
- All submissions should follow the OSCOLA referencing style.

#### **Important Dates:**

Submission deadline for abstract: 15 June 2024.

Notification of acceptance: 30 June 2024

Submission deadline for full paper: 30 September 2024

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## Concept Note

The Maldives, an archipelagic nation located in the Indian Ocean, has a unique geographical and geopolitical significance in international law. Historically, the Maldives has been an active participant in the global trade laid by Arab and Persian merchants.<sup>3</sup> It witnessed freedom of the seas before the Age of Discovery.<sup>4</sup> Foreign trade for Maldives has been a necessity rather than a matter of choice given the lack of resources to ensure even food security. The Maldives is famous for giving the world its first currency i.e., cowry, which was used by the Arab, Yamani, South Asian and Chinese traders for different purposes including for slave trade in Africa.<sup>5</sup> The arrival of European traders in the Indian Ocean marked a significant turning point as it disrupted the well-established trade network among Asian, Arab, and African merchants. This disruption led to the emergence of a new economic order, largely shaped, and dominated by European corporations.<sup>6</sup>

The Maldives, except for a brief period of 15 years under Portuguese occupation, was never directly ruled by a European power. Considering the vulnerabilities of securing Island Nation, the Maldivian kings seem to have sought military alliance with regional and European powers. H C P Bell has argued that the Dutch inherited the suzerainty over Maldives without use of force.<sup>7</sup> However, it is not clear if the King of Maldives sought a military alliance with the Dutch or there was any treaty for the formal recognition of the suzerain. In 1796 the inheritance of the suzerainty over the Maldives fell to the British through a letter of exchange.<sup>8</sup> Apart from this letter exchange there is no evidence of a treaty between the Maldives and the British until 1887. The British signed a protectorate agreement in 1887 with the king of Maldives due to protest against the Bohra merchants (British subjects) that lasted till the independence in 1965.<sup>9</sup> What seems to be a case semi-colonialism, the Maldives demonstrated a unique feature of participation in foreign trade but strong resistance against foreign intervention in domestic affairs and the internal market.<sup>10</sup> Once a part of large

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<sup>3</sup> Harry Charles Purvis Bell, *The Maldivian Islands: An Account of the Physical Features, Climate, History, Inhabitants, Productions, and Trade*. (1 edition 1883, Asian Educational Services 2004).

<sup>4</sup> RP Anand, *Origin and Development of the Law of the Sea: History of International Law Revisited* (Martinus Nijhoff, 1983)

<sup>5</sup> Bin Yang, *Cowrie Shells and Cowrie Money: A Global History* (1st edn, Routledge 2018); Jan Hogendorn and Marion Johnson, *The Shell Money of the Slave Trade* (1st edn, Cambridge University Press 1986).

<sup>6</sup> KN Chaudhuri, *Trade and Civilisation in the Indian Ocean: An Economic History from the Rise of Islam to 1750* (1st edn, Cambridge University Press 1985).

<sup>7</sup> Bell (n 1) 30.

<sup>8</sup> *ibid* at 36.

<sup>9</sup> Shafeenaz Abudl Sattaar, 'British Protectorate Status (1887-1965) and Connotations for the Maldivian Economy' (2021) 3 *Maldives Economic Review* 4.

<sup>10</sup> Prabhakar Singh, 'Of International Law, Semi-colonial Thailand, and Imperial Ghosts' (2019) 9 *Asian Journal of International Law* 46; Hammoudi, Ali. "The International Law of Informal Empire and the 'Question of Oman'." *TWAIL Rev.* 1 (2020): 121.

thalassocracy of Malabar region, Maldives had its own geostrategic importance as an entrepot and a location suitable for surveillance in the Indian Ocean.<sup>11</sup> At independence in 1965, one of the main contributors to its economy was its shipping fleet which not only reflected an assertion of control over its foreign trade, but was also a symbol of its identity as a nation of seafarers and served as a pathway to participation in global commerce.<sup>12</sup>

Since the British did not rule the Maldives directly nor did they interfere with the local customs, the Maldives did not inherit the British legal system. Thus, continuing a shariah based legal system, the Maldives adopted Sunni legal tradition.<sup>13</sup> So far, the Maldives has adopted seven constitutions at different points in time, with the first constitution being adopted in 1932.<sup>14</sup> The Constitution of 2008, which currently governs the country, mandates that while interpreting the fundamental rights under Chapter II, courts shall consider international treaties to which Maldives is a party (Art. 68).<sup>15</sup>

Following independence, Maldives joined the United Nations in 1965, triggering a debate on the relevance of the duties and rights under the UN Charter for very small states and paving the way for other small states to join the United Nations.<sup>16</sup> It joined the Non-Aligned Movement in 1976, the Commonwealth of Nations

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<sup>11</sup> Binu John Mailaparambil, 'The Ali Rajas of Cannanore: Status and Identity at the Interface of Commercial and Political Expansion, 1663-1723' (Leiden University 2007)

<https://scholarlypublications.universiteitleiden.nl/handle/1887/12488> .

<sup>12</sup> See: Romero-Frias, Xavier. "Rules for Maldivian Trading Ships Travelling Abroad (1925) and a Sojourn in Southern Ceylon." *Politeja-Pismo Wydziału Studiów Międzynarodowych i Politycznych Uniwersytetu Jagiellońskiego* 13.40 (2016): 67-84; The Rise and Fall of the Maldivian Shipping Fleet (Minivan News – Archives)

<https://minivannewsarchive.com/business/the-rise-and-fall-of-the-maldivian-shipping-fleet-2260>

<sup>13</sup> Shamsul Falaah, 'How the Law in the Maldives Paved the Way for a Sunni Legal Tradition' (2022) 10 Melbourne Asia Review <https://melbourneasiareview.edu.au/how-the-law-in-the-maldives-paved-the-way-for-a-sunni-legal-tradition/> accessed 2 August 2023.

<sup>14</sup> The first constitution of 1932 and the second constitution of 1942 were based on a constitutional monarchy. The third constitution of 1953, which is known as the first republican constitution survived less than a year. The fourth constitution of 1954 reverted to a constitutional monarchy. However, the Fifth constitution of 1968 once again adopted a republican system based on semi parliamentary system and the sixth constitution of 1998, which was based on a presidential system persisted until the constitution of 2008 came into effect.; Shamsul Falaah, 'Towards a Maldivian Nation-State: The Constitutions of 1932 and 1968' in Kevin Tan and Ridwanul Hoque (eds), *Constitutional Foundings in South Asia* (Hart Publishing, an imprint of Bloomsbury Publishing 2021).

<sup>15</sup> Article 86 (Interpretation): "When interpreting and applying the rights and freedoms contained within this Chapter, a court or tribunal shall promote the values that underlie an open and democratic society based on human dignity, equality and freedom, and shall consider international treaties to which the Maldives is a party."

<sup>16</sup> Thomas D Grant, *Admission to the United Nations: Charter Article 4 and the Rise of Universal Organization* (Brill | Nijhoff 2009) 60; Also See: Application by letter dated 26 Aug 1965 from the Prime Minister of the Government of Maldives to the Secretary-General, S/6645 <https://digitallibrary.un.org/record/576816?ln=en>;

in 1982, and joined South Asian Association for Regional Cooperation in 1985 as a founding member. In 1995, Maldives became a member of the World Trade Organisation (WTO). Currently, Maldives is a member of 63 international organizations.<sup>17</sup> Currently, Maldives is a member of 63 international organizations.<sup>18</sup> As of now, the Maldives party to 235 multilateral and bilateral treaties.<sup>19</sup> One significant feature of Maldives treaty practice is the justification given for reservation to human rights conventions. Like Muslim-majority States, the Maldives also makes religion-based reservations.<sup>20</sup>

As a committed member of the United Nations, the Maldives has, from the outset, consistently taken principled positions on nearly all issues related to decolonisation and self-determination. Over the past three decades, it has championed the urgent cause of climate change and sea level rise. The first political manifestation of this can be found in the Malé Declaration of 1989.<sup>21</sup> It was also the initiative of the Maldives that led to the creation of the Alliance of Small Island States (AOSIS) in 1990. To mitigate the loss of land due to sea level rise, the Maldives started constructing artificial islands<sup>22</sup> which has been criticized for damaging the natural environment and seen as the shift from the cause of sea level rise and climate change.<sup>23</sup> Being an archipelagic State, the Maldives states practices on sea level rise, maritime delimitation

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recommendation by SC res 212, 20 Sept 1965; admission by GA res 2009 (XX), 21 Sept 1965

<https://digitallibrary.un.org/record/280445?ln=en>

<sup>17</sup> 'Maldives Foreign Policy' (*High Commission of the Republic of Maldives, London*, 2 August 2023)

<<https://www.maldiveshighcommission.uk/index.php/political/maldives-foreign-policy>>.

<sup>18</sup> 'Maldives Foreign Policy' (*High Commission of the Republic of Maldives, London*, 2 August 2023)

<https://www.maldiveshighcommission.uk/index.php/political/maldives-foreign-policy>.

<sup>19</sup> List of treaties to which the Maldives is party to, available at: <https://www.gov.mv/en/files/treaties-list-december-2020.pdf>

<sup>20</sup>For e.g.: Maldives reservation Convention on the Rights of Child -

"1) *Since the Islamic Shariah is one of the fundamental sources of Maldivian Law and since Islamic Shariah does not include the system of adoption among the ways and means for the protection and care of children contained in Shariah, the Government of the Republic of Maldives expresses its reservation with respect to all the clauses and provisions relating to adoption in the said Convention on the Rights of the Child.*"

"2) *The Government of the Republic of Maldives expresses its reservation to paragraph 1 of article 14 of the said Convention on the Rights of the Child, since the Constitution and the Laws of the Republic of Maldives stipulate that all Maldivians should be Muslims.*"

Also See: Salem, Nora. "Sharia Reservations to Human Rights Treaties." *Max Planck Encyclopedias of Public International Law* (2019).

<sup>21</sup>The Malé Declaration on Global Warming and Sea Level Rise (18 November 1989), available at:

<https://digitallibrary.un.org/record/81035?ln=en>

<sup>22</sup> Gagain Michael, 'Climate Change, Sea Level Rise, and Artificial Islands: Saving the Maldives' Statehood and Maritime Claims Through the "Constitution of the Oceans"' (2012) 23 *Colorado Journal of International Environmental Law and Policy* 77.

<sup>23</sup> Jack Baord, 'Fighting the Tides: Maldives Races to Reclaim More Land as Sea Levels Rise' (*Channel News Asia*, 2 April 2022) <<https://www.channelnewsasia.com/sustainability/maldives-sea-level-rise-land-reclamation-2578871>

and climate change can be also inferred from its submission to the United Nations.<sup>24</sup> The Maldives recently concluded a dispute concerning delimitation of the maritime boundary with Mauritius before the International Tribunal for the Law of the Sea.<sup>25</sup> This case brought an interesting turn in Maldivian Foreign Policy on the decolonization of Chagos Island.<sup>26</sup> Despite its consistent stance in favor of decolonisation, the Maldives was one of the six countries that voted against the UNGA resolution in 2019.<sup>27</sup> In August 2022, Maldives' President Ibrahim Solih sent a letter to the prime minister of Mauritius, expressing the Maldives' government's support for Mauritius' claim to the Chagos Islands, which are currently administered by the United Kingdom as part of its British Indian Ocean Territory (BIOT). President Solih affirmed that Maldives would back Mauritius' claim during future votes at the United Nations General Assembly.<sup>28</sup>

Since the mid-1970s, Maldives has increasingly become more active in its foreign relations, joining the non-alignment in 1976 after the departure of the British from Gan in 1976. The country's sustained engagement with the principal organs of the United Nations dates from 1976 when a permanent mission of Maldives was established in New York. The Maldives has actively contributed to agenda-setting in areas of interest to small island states, particularly on national security, climate change, and economic development. It has been elected to serve in the Human Rights Council on three occasions and its experts have contributed to the development of international human rights law and standards, through membership in treaty bodies and special procedures mandates. It has sought election to the Security Council and in 2021-22, the Maldives held the presidency of the General Assembly, when the current Foreign Minister Abdulla Shahid presided over the seventy-sixth session of the United Nations General Assembly. In addition, the Maldives is party to a number of international treaties thereby contributing to increasing the legitimacy of these treaties and in some cases, such as in the case of the Optional Protocol to the Convention on Torture, being

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<sup>24</sup>See: Information and Examples of State Practice on "Sea-level rise in relation to international law", (UN International Law Commission 2019) [https://legal.un.org/ilc/sessions/72/pdfs/english/slr\\_maldives.pdf](https://legal.un.org/ilc/sessions/72/pdfs/english/slr_maldives.pdf) ; Submission by Maldives, Commission on the Limits of the Continental Shelf (CLCS) Outer Limits of the Continental Shelf beyond 200 Nautical Miles from baselines, available at:

[https://www.un.org/depts/los/clcs\\_new/submissions\\_files/submission\\_mdv\\_53\\_2010.htm](https://www.un.org/depts/los/clcs_new/submissions_files/submission_mdv_53_2010.htm)

<sup>25</sup>Dispute concerning delimitation of the maritime boundary between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives) <https://www.itlos.org/en/main/cases/list-of-cases/dispute-concerning-delimitation-of-the-maritime-boundary-between-mauritius-and-maldives-in-the-indian-ocean-mauritius/maldives/>

<sup>26</sup> Mimrah Ghafoor, 'Why Maldives Sided with Mauritius on the Chagos Islands' (*The Diplomat*, 10 January 2023) <https://thediplomat.com/2023/01/why-maldives-sided-with-mauritius-on-the-chagos-islands/> .

<sup>27</sup> UNGA Res 73/295 (22 May 2019)

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N19/151/29/PDF/N1915129.pdf?OpenElement>

<sup>28</sup> Mimrah Ghafoor, 'Why Maldives Sided with Mauritius on the Chagos Islands' (*The Diplomat*, 10 January 2023) <<https://thediplomat.com/2023/01/why-maldives-sided-with-mauritius-on-the-chagos-islands>>.

an early ratifier to act as a norm entrepreneur.<sup>29</sup> Maldives is unique in the South Asia as the only State that is party to the Vienna Convention on the Law on Treaties,<sup>30</sup> and as a state party to 15 of the 18 human rights treaties of the United Nations, holds second highest membership of human rights treaties in the Asia-Pacific region, with Mongolia leading at.<sup>31</sup>

While foreign trade was always an important aspect of its foreign relations, a major restructuring and reorientation of its foreign policy machinery towards commercial diplomacy was initiated in 2005, following the Maldives' graduation from the category of least developed countries and the initiation of a domestic democratization programme the previous year. The number of diplomatic of the Maldives jumped from four to 13 between 2005 and 2007. Perhaps the highpoint of this outreach was the opening of the world's first embassy on metaverse, when it opened an Embassy on Second Life. It also paid increased attention to regional economic cooperation, taking the lead in developing a comprehensive legal framework for trade liberalization to build equitable benefits for the smaller and less developed economies of the SAARC region. With transition to democracy in 2008, successive governments have cumulatively added to the efforts to engage with foreign trade and investment, reflecting the Maldivian economy's huge dependence on foreign investment.

In recent years, Maldives has contested important international arbitration disputes with foreign investors and has lost most of them.<sup>32</sup> The Maldives government has paid huge settlements awarded by the International Arbitration Court in Singapore, including \$271 million for the cancellation of an airport development agreement and \$18 million for the cancellation of a border control project.<sup>33</sup> Despite it ample

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<sup>29</sup> See Parties to Convention Against Torture and Other Cruel, Inhuman or Degrading Treaties, available at: [https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-9&chapter=4&clang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-9&chapter=4&clang=en)

<sup>30</sup> See Parties to the Vienna Convention on the Law of Treaties, available at: [https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg\\_no=XXIII-1&chapter=23&Temp=mtdsg3&clang=en](https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXIII-1&chapter=23&Temp=mtdsg3&clang=en)

<sup>31</sup> List of treaties to which the Maldives is party to, available at: <https://www.gov.mv/en/files/treaties-list-december-2020.pdf>

<sup>32</sup> Sun Travels & Tours Pvt Ltd v. Hilton International (Maldives) Pvt Ltd [2020] SGCA 65; Wilson v. Addu Investments Private Ltd, [2014] NSWSC 381; Sergio R. Osmena etc. v. Department of Transportation and Communication, GMR-Megawide CIBU Airport Corporation [2016] PHSC 186; Maldives Airports Co Ltd and another v. GMR Male international Airport Pte Ltd [2013] SGCA 16

<sup>33</sup> Maldives signs UN arbitration convention (*Maldives Independent* 18 September 2019) <https://maldivesindependent.com/business/maldives-signs-un-arbitration-convention-147999> accessed 02 Aug 2023

reliance on foreign investment, the Maldives is not a party to the ICSID Convention.<sup>34</sup> Till date it has signed only one Bilateral Investment Treaty (BIT) with UAE in 2017.<sup>35</sup> Keeping in view the foreign investments and lack of legal framework to settle disputes, in 2019, Maldives signed the New York Convention (1959)<sup>36</sup> and Singapore Convention on Mediation (2018).<sup>37</sup> The Maldives signed a Double Tax Avoidance Treaty with the United Arab Emirates, which entered into force in January 2017.<sup>38</sup> In April 2016, Maldives and India signed an agreement to avoid double taxation of income derived from air transport and an agreement to share information on taxes, both of which are currently in force.<sup>39</sup> Maldives is a member of the OECD Inclusive Framework on BEPS, and the government has agreed to the October 2021 Statement on a Two-Pillar solution, including Pillar Two, which will introduce a global minimum corporate tax rate.<sup>40</sup> Hence, the Maldives' interaction with international law plays a vital role in addressing these issues and shaping its future.

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<sup>34</sup> Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (International Centre for Settlement of Investment Disputes (ICSID) 575 UNTS 159

<sup>35</sup> United Arab Emirates – Maldives BIT (2017)

<sup>36</sup> Convention on the Recognition and Enforcement of Foreign Arbitral Awards (adopted 10 June 1958, entered into force 7 June 1959) 3 UNTS 330 (New York Convention)

<sup>37</sup> United Nations Convention on International Settlement Agreements Resulting from Mediation (adopted 20 December 2018, entered into force 12 September 2020) UNTS 3369

<sup>38</sup> Agreement between the Government of Republic of Maldives and the Government of the United Arab Emirates for the Avoidance and of Double Taxation and Prevention of Fiscal Evasion with Respect to taxes on Income and Capital, available at: <https://www.mira.gov.mv/Files/GetFile/0dcf3f8f-9245-4cc6-871c-57acbf7a10d4>

<sup>39</sup> Agreement for Avoidance of Double Taxation of Income Derived from International Air Transport with Maldives, available at: <https://incometaxindia.gov.in/DTAA/10862000000000557.htm>

<sup>40</sup> 2023 Investment Climate Statements: Maldives (*U.S. Department of State*) <https://www.state.gov/reports/2023-investment-climate-statements/maldives/>