CHAPTER FOUR

ACCOMMODATION OF RELIGIONS & NON-IDENTIFICATION

4.1 Introduction

In the previous Chapter the focus was on those states that, without an explicit intention of establishing a religion as the state religion, support a single religion or constitutionally acknowledge the role or position of the traditional religion within the state. States may cooperate or interrelate with religions, or accommodate religions, without treating a specific religion preferentially. Such forms of state practice would certainly not come down to establishing or endorsing a religion for it is ‘Religion’ in abstracto that is being accommodated. This (potentially) non-preferential form of interaction between the state and religion would, strictly speaking, also rule out a clear-cut separationist state (see Chapter 5) as under such regimes all forms of state interference with religious affairs or religious interference with state affairs are in principle taboo. Different regimes of accommodation have emerged in different states for different reasons; moreover, they all have different legal consequences. This also means that the precise degree of ‘non-preferentiality’ varies. The objective of this Chapter is to chart the precise legal ramifications of the phenomenon of accommodation of religion. States that are constitutionally ‘indifferent’ to the question of religion can and must be distinguished from states that actively accommodate religion. These states have not established a religion as state religion, they do not distinctly support one religion over other religions nor expressly accommodate more than one religion simultaneously; yet, they do not explicitly or proactively seek to internalize the ideal of secularism or separationism (a policy of strict separation of state and religion) either. In these instances of ostensible ‘non-identification’, state practice must be scrutinized closely in order to assess whether such states are de facto secular or non-secular.

4.2 Accommodation of Religion: Unspecified Support vs. Support for Various Religions

Most states at some point in time have actively supported the country’s traditional or dominant religion. Accommodation of different religions is a relatively recently emerging modus of state–religion identification. This phenomenon begs the question what could be the rationale behind this policy. Looking at state practice, ‘accommodation of religion’ as an arrangement has
come to the fore as a political solution to recent religious strife; in other cases it seems that the state in question considers this arrangement to flow logically from—also relatively recently emerging—norms of international law.

It is postulated at the outset that in most cases of apparent ‘accommodation of religion,’ the arrangement is not, upon closer inspection, as non-preferential as the term suggests. A distinction must be made between states that seek to accommodate and render support to religion (unspecified) and states that support the officially recognized religions. The two systems are comparable in that neither institute a preference for a single religion on the part of the state. The difference is that under the former system all religions are in principle eligible for state support whilst under the latter regime there may be religions that are devoid of official recognition and consequently of state support. The discussion of state practice below demonstrates that the number of states which genuinely accommodate and support religion in abstracto is fairly small. Constitutional accommodation of religion in practice, more often than not, translates into practices of cooperation and support from which some (but not all) religions and beliefs benefit.

Within the category of accommodation of religion it is possible to further distinguish between arrangements that allow for direct political representation of religions; systems that provide for an advisory role of religions; financial support; and, finally, a few sui generis arrangements.

4.2.1 Direct Political Representation of Religions

Direct political representation of the various religious groups present in a country is the measure par excellence in seeking to accommodate differing religious interests. For instance, up to eight of the 70 seats of the National Assembly of Mauritius are taken by members belonging to one of the four recognized ethnic/religious communities, namely, the Hindu community, the Muslim community, the Sino-Mauritian (Chinese Mauritanians) community and ‘others’ (i.e. Creole). Another good example is the Constitution of Malawi which provides that the—as yet to be established—Senate of Malawi shall partly consists of representatives of the “major religious faiths” in Malawi. The major religious faiths are Protestantism (55 per cent), Roman Catholicism (20 per cent) and Islam (20 per cent).