

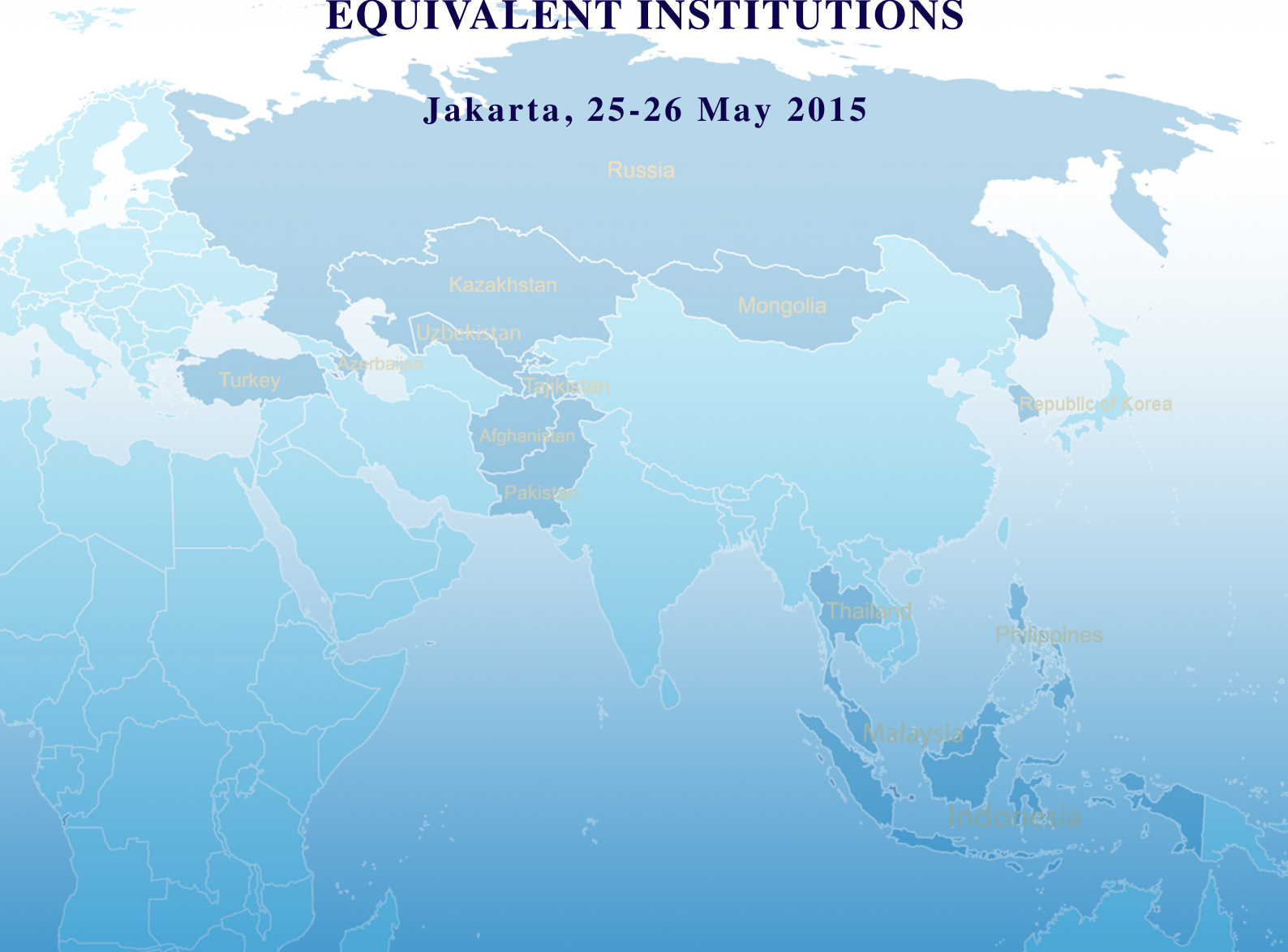


THE CONSTITUTIONAL COURT OF  
THE REPUBLIC OF INDONESIA

# *Chairman Summary Meeting of the Secretary Generals*

**ASSOCIATION OF  
ASIAN CONSTITUTIONAL COURTS  
AND  
EQUIVALENT INSTITUTIONS**

**Jakarta, 25-26 May 2015**



## --- AGENDA ITEM 1 ---

### **Brief description of the authorities of each institution and support provided for the implementation of the aforementioned authorities**

#### **Opening**

1. The meeting of the Secretary-Generals of the Association of Asian Constitutional Courts and Equivalent Institutions (“the Association”) was held in Jakarta, Indonesia on 25–26 May 2015. The meeting was attended by the Secretary-Generals of the Association from 13 (thirteen) member countries, namely Indonesia (Host), Afghanistan, Azerbaijan, Kazakhstan, South Korea, Malaysia, Pakistan, Philippines, Russia, Tajikistan, Thailand, Turkey, and Uzbekistan.
2. The meeting was aimed at having in-depth discussions on the preparation of the forthcoming Third Congress and Board of Members Meeting of the Association and other issues related to the Association, as well as strengthening cooperation among the Secretary Generals of the Association members.
3. In his welcoming remarks, the President of the Constitutional Court of the Republic of Indonesia expressed his pleasure to receive all delegations and thanked all participants for attending the meeting. The President spoke about the geographical, anthropological, sociological, and ideological elements of Indonesia (17,000 islands with a population of 240 million, more than 700 regional dialects and over 300 ethnic groups). Regarding the nation’s varied ideologies, he stated that tolerance amidst diversity is one of the key principles in the way of life in Indonesian society. As President of the Association, the President of the Constitutional Court of the Republic of Indonesia conveyed that the meeting is the best opportunity for the sharing of experience, best practices and efforts in enhancing the role of the Constitutional Courts and equivalent institutions, particularly in supporting the operational aspect of said institutions. In conclusion, the President reiterated the importance of these

*This Chairman Summary is the summary of deliberations from the meeting. Should there be any inconsistency in this summary, please refer to the recorded file.*

meetings to the agenda of the Association in the future and expected the meetings to play a key role in the preparations for the Board of Members Meeting as well as the Congress of the Association. The Indonesian Delegation presented on the development of the Constitutional Court of the Republic of Indonesia (MK), starting with the history of the institution based on the supremacy of the 1945 Constitution with regards to the Protection of human rights and constitutional rights. One of the important results of the 1945 Constitution amendment was the establishment of MK on 13 august 2003. MK has 5 constitutional competencies, namely, i) to conduct judicial review to determine whether the substance of established laws are in line or not with the 1945 Constitution, as the main task of MK is to guard the 1945 Constitution against any violation of constitutional law; ii) to settle disputes of authority between state institutions; iii) to dissolve political parties as this process can only be carried out based on MK's decision regarding the petition from government; iv) to settle disputes regarding the result of general elections, pursuant to petition by political parties, presidential candidates, DPD or governor candidates; v) to pass verdict on Presidential dismissal or impeachment, only in cases where the President violates the 1945 Constitution, through the process of constitutional adjudication. In addition, the Indonesian Delegation also mentioned about the number of Cases dealt by MK. In enforcing constitutional justice, the MK is also supported by the General Secretariat and the Registrar. On matters regarding MK's latest development, the Delegation highlighted the possibility for deliberations of MK to be conducted both in court rooms or in long distance session through the usage of video conference. Lastly, the Indonesian Delegation informed that MK also hosted activities to strengthen constitutional law to increase public awareness on individual constitutional rights.

4. The Afghanistan Delegation thanked Indonesia for the warm welcome. The Delegation expressed their happiness and gratitude to be in attendance with the other delegations from a number of countries. The delegate presented a brief description of Afghanistan's Independent Commission for Overseeing the Implementation of the Constitution (ICOIC). It is a new institution, established based on Article 57 of the Afghanistan Constitution to oversee the implementation of the constitution. Based on Article 54, the institution comprises of 7 members appointed by the President with the approval of parliament. Meanwhile, Article 8 stipulates the authorities of the Commission, namely, to interpret the constitution and provide legal advice and recommendation to the President. The ICOIC also determines whether there is any violation of the constitution in the drafting of laws and report such violations to the President. The ICOIC is also involved in activities to enhance public awareness through programs

*This Chairman Summary is the summary of deliberations from the meeting. Should there be any inconsistency in this summary, please refer to the recorded file.*

in different levels of society. Currently, Afghanistan is amending its constitution by attempting to change ICOIC or the Constitutional Commission to a Constitutional Court and is now working on the draft amendment. Afghanistan is also trying to rectify its public awareness program on a philosophical basis related to human rights and constitutional principles at all levels of society (Ministry of Education, education institutions, schools and universities by engaging all stakeholders). It is worth noting that the Afghanistan Delegation referenced Indonesia's experiences as a model to be followed with regards to Afghanistan's need for an umbrella ideology to unite all citizens, similar to Indonesia's Pancasila. Lastly, the Afghanistan Delegation also mentioned the importance of engaging with other equivalent institutions in other societies in order to collaborate and learn about their cultures and social values.

5. The Azerbaijan Delegation expressed its gratitude to the Constitutional Court of the Republic of Indonesia for its hospitality and for convening the Meeting. The Delegation stated that their presentation would touch on the basic features of the Constitutional Court of Azerbaijan and its working methods and functions. The Constitutional Court of Azerbaijan was established in July 1998 with a competence as enshrined in the Constitution. The Delegation explained that the functioning of the Court is based on the principles of independence, collegiality, publicity and the supremacy of the Constitution. The competence of the Court covers, amongst others, conformity of laws, decrees and other normative legal matters with the Constitution and the laws of the Republic of Azerbaijan. The Azerbaijan Delegation further explained that almost all themes of Azerbaijan's legislation are subject to constitutional review by the Court. Nevertheless, the Delegation emphasised that just like other courts, the Constitutional Court of Azerbaijan cannot initiate or institute constitutional proceedings without inquiry, request or complaints from interested applicants. The decisions of the Court are final and cannot be cancelled, modified or officially interpreted by any person or institution. He stated that the majority of cases received are individual complaints. Lastly, the Azerbaijan Delegation informed the participants that over 17 years, the Court has adopted 300 decisions and finally reiterated his gratitude to Indonesia for chairing the Meeting and for their efforts in the Presidency of the AACC this year.
6. The Kazakhstan Delegation expressed great appreciation to Indonesia as the host for making this event possible. The Kazakhstan Delegation began with an introduction to the importance of the Regional cooperation amongst Constitutional Courts. The Kazakhstan Delegation stated that in 1995 the Constitutional Court of Kazakhstan

*This Chairman Summary is the summary of deliberations from the meeting. Should there be any inconsistency in this summary, please refer to the recorded file.*

was abolished and subsequently replaced with the Constitutional Council as the main institution to have jurisdiction related to constitutional matters in Kazakhstan. The Council comprises of 7 members, each with a term of 6 years. The competence of the Council is to i) determine the jurisdiction of the Council over cases brought to them; ii) address any questions posed by the President or Parliament. Furthermore, the Delegation of Kazakhstan expressed the importance of the AACC and stands ready to cooperate with member countries in order to establish a uniform approach for implementation of the constitutional review for the protection of human rights and freedoms.

7. The Malaysian Delegation explained that The Federal Court is the apex court in the judicial hierarchy of Malaysia pursuant to the Federal Constitution and the Courts of Judicature Act 1964. The Federal Constitution stipulates that the Federal Court has the following jurisdiction: i) Jurisdiction to determine appeals to decisions of the Court of Appeal, the High Court or a judge thereof; ii) Such original or consultative jurisdiction as is specified in Articles 128 and 130; iii) Such other jurisdiction as may be conferred by or under federal law. In addition to that, the Federal Court is also embedded with an exclusive jurisdiction to i) determine the validity of the law made by Parliament or by the Legislature of a state; ii) decide upon disputes on any other question between the States of the Federation or between the Federation and a State. In such a dispute, the Federal Court may only pronounce a declaratory judgment. The Federal Court has Referral Jurisdiction, under which it may determine in any pending proceedings before another court. A question arises as to the effect of any provision in the Constitution and shall thereupon remit the case to that other court to be disposed of in accordance with the determination. The Federal Court has also Advisory Jurisdiction, by which it may give its opinion on any question that arises or is likely to arise, and that has been referred by the Yang di-Pertuan Agong, concerning the effect of any provision of the Constitution.
8. With regards to registry, Federal Constitution expressly provides that the Federal Court shall have a principal registry, with the main function of the registry being i) to deal with all cases and documents filed under the Federal Court's adjudication; and ii) to manage all cases prior to the fixing of hearing dates so that parties comply with all rules in ensuring papers are in order. Furthermore, The Chief Registrar's Office is the administrative arm of the Malaysian Judiciary for both superior and subordinate courts. The Chief Registrar's Office provides administration support to the Federal Court and assumes responsibility for the administration of the courts throughout

*This Chairman Summary is the summary of deliberations from the meeting. Should there be any inconsistency in this summary, please refer to the recorded file.*

the country, comprising the Federal Court, the Court of Appeal, the High Court, the Sessions Court and the Magistrates' Court. It is also responsible for managing the courts' human resources, including recruitment, transfer, promotions and discipline of its personnel, and is responsible for all financial matters of the courts, including budgeting for the courts' operation.

10. The Pakistan Delegation thanked Indonesia for the convening and excellent arrangement of the meeting. The Delegation of Pakistan began by explaining that the Supreme Court is the Constitutional Court of Pakistan and is the court of ultimate appeal or apex court and final arbiter of law and constitution. The Pakistan Delegation also stated that Constitutional Court jurisdiction in Pakistan consist of several jurisdictions. Constitutional jurisdiction covers disputes between Federation and any Federating Unit/Province or Provinces; disputes between two or more Federating Units/Provinces; enforcement of fundamental rights and public interest litigation. Advisory Jurisdiction covers references by the President for opinion and reports. Fundamental Rights Jurisdiction covers Public interest litigation and human rights issues. Meanwhile, Appellate Jurisdiction covers Direct Appeal and Appeals by Special Leave to Appeal. The Delegation also added that Pakistan's Supreme Court has two registrars, judicial registrar and administrative registrar. Lastly, The Pakistan Delegation stated that as an independent institution, the judges of the supreme court are not determined by the executive branch of government but rather appointed from the most senior judges by the judicial commission and approved by the parliament and then appointed by the supreme judicial commission.
  
11. The Philippines Delegation began its remarks by explaining the four levels of the Philippines' Judicial system. The system started from the lowest level of judicial authority and continued to the highest, which is the Supreme Court of the Philippines. The Supreme Court has the general attributes and powers of a constitutional court. These powers are judicial, rule-making and administrative powers. The Court is able to adjudicate both constitutional and non-constitutional cases. In particular, the Supreme Court also has the authority to determine whether there exists an abuse of competence/jurisdiction as performed by the courts of the lower levels. He also shared the current challenges faced by the Court, which, among others, included budgetary constraints, case congestion and delay, integrity issues and competency issues. In facing these challenges, judicial reforms are being undertaken such as to restore and institutionalise integrity and public credibility as well as managing effective and efficient human resources. Organisationally, he stated that the Clerk of

*This Chairman Summary is the summary of deliberations from the meeting. Should there be any inconsistency in this summary, please refer to the recorded file.*

the Supreme Court is equivalent to the role of Secretary General in other constitutional courts. The office of the Clerk serves as the nucleus of the Supreme Court's administrative machinery. Lastly, the Delegation explained that in the administration and supervision of the lower courts, the Supreme Court is assisted by the Office of the Court Administrator.

12. The Korean Delegation thanked the Constitutional Court of the Republic of Indonesia for convening the Meeting and for its Presidency of the AACC. The Delegation explained that the Korean Constitutional Court was established in 1987 as a manifestation of the desire of the Korean people for a democratic system in the country. They continued by outlining the authorities of the Korean Constitutional Court, which among others, covering constitutional review of the statutes, constitutional complaints and the dissolution of political parties. They explained that the Secretariat of the Korean Constitutional Court is headed by a ministerial level-Secretary General and assisted by a vice-minister level Deputy Secretary General. The Korean Delegation also shared that the Court has the experience of addressing a wide range of rare and unprecedented cases, for instance, from the impeachment of an incumbent President in 2004 to the dissolution of a political party in 2014. They informed that the Korean Constitutional Court worked hard to gain and preserve the stature as a trusted public institution. This has been evidenced and exemplified by successive awards accorded to it as the most trusted state agency. They also stressed the vibrant and active engagement of the Korean Constitutional Court on the international level as the Court is actively involved in many international organizations, such as the Venice Commission, the World Conference on Constitutional Justice, and the Association of Asian Constitutional Courts and Equivalent Institutions. Such participation displays its efforts to share the values of democracy and human rights protection and contribute to the development of constitutional justice. The Court is also involved in the promotion and exchange of shared mutual experience and wisdom with other constitutional courts and/or other institutions performing constitutional jurisdiction across the world. The Delegation affirmed the Korean Constitutional Court's commitment to continue to make the Court a trustworthy institution while at the same time contributing to the global community.

13. The Russian Delegation stated his apology regarding the unavailability of the Constitutional Court Secretary-General to attend the meeting. The Russian Delegation conveyed that the Constitutional Court of the Russian Federation is the highest judicial authority in Russia, competent to deliver constitutional justice. The

*This Chairman Summary is the summary of deliberations from the meeting. Should there be any inconsistency in this summary, please refer to the recorded file.*

Court was established in 1991 pursuant to Law on the Constitutional Court of the Russian Soviet Federative Socialist Republic. From 1995 the Federal Constitutional Law On the Constitutional Court of the Russian Federation regulates the Court's activities. Furthermore, the Court has the following general competencies: i) to consider the conformity with the Constitution of the Russian Federation of federal laws, constitutions, treaties of territorial subjects, and international treaties not yet in force; ii) to resolve competence disputes between the authorities, if such competence is stipulated by the Constitution; iii) to interpret the Constitution of the Russian Federation; iv) to determine compliance with established procedures when charging the President of the Russian Federation with treason or other grave crimes; v) to check the conformity with the Constitution of the Russian Federation of the issues put to a referendum of the Russian Federation in accordance with the respective federal constitutional law regulating the conduct of referenda of the Russian Federation. He further explained that in its activities, the Constitutional Court decides solely on matters of law. The Constitutional Court of the Russian Federation consists of nineteen judges appointed by the Council of the Federation based on proposal by the President of the Russian Federation. It was highlighted that Decisions of the Constitutional Court of Russia are final and binding, non-appealable and, therefore, not reversible. As for the Secretariat of the Court, it is an independent division of the Constitutional Court, ensuring its due activities. The main function of the Secretariat is the preliminary review of received applications in line with the requirements of said Federal Constitutional Law. Furthermore, the Secretariat receives visitors and carries out correspondence with applicants independently. The number of staff at the Secretariat is 155 people. It was further stressed that the issues of personnel, finance, logistics, welfare and medical support of the Secretariat staff are resolved by the Department of Civil Service and Personnel, the Financial Department and the Administrative Department of the Court, respectively. In addition, the Secretariat provides a significant amount of organisational and interim support related to the functioning of the Constitutional Court, which are i) preparing analytical and reference materials on assignments of the President and judges of the Constitutional Court; ii) providing organisational and documentation support to the Constitutional Court and the judge's meetings; iii) examining and summarising the activities of public bodies to ensure the implementation of decisions of the Constitutional Court; iv) enforcing international relations of the Constitutional Court; v) examining and summarising foreign constitutional review jurisprudence and practice of international judicial bodies; vi) providing the publishing activities of the Constitutional Court; viii) providing interaction with the media in the coverage of the activities of the

*This Chairman Summary is the summary of deliberations from the meeting. Should there be any inconsistency in this summary, please refer to the recorded file.*



Constitutional Court; ix) ensuring creation, support, and development of informational systems and data banks of the Constitutional Court.

14. The Tajikistan Delegation thanked the AACC and the Indonesian Constitutional Court. In the presentation, the Delegation informed that in March 2008, amendments and changes were made to the Constitutional Law “On Constitutional Court of the Republic of Tajikistan”. In accordance with this law, the Constitutional Court was endowed with new and important mandates. Now, the Court is able to determine compliance to the Constitution, draft amendments and additions to the Constitution of the Republic of Tajikistan and draft laws and other matters submitted to referenda. The amendments also expanded the range of subjects which can be appealed to the Constitutional Court. Resultant of the amendments, each deputy of the lower chamber and every member of the upper chamber of Majlisi Oli (Parliament of RT) may appeal directly to the Constitutional Court of the Republic of Tajikistan. In addition, the Commissioner for Human Rights under these new amendment, can be the subject of appeal to the Constitutional Court, while Citizens and legal persons have the right to appeal directly to the Constitutional Court on the conformity to the Constitution, laws and other normative legal acts. Judges of the Republic of Tajikistan may also appeal to the Constitutional Court on the conformity to the Constitution, the laws and other normative legal act governing plenums of the Supreme Court and the Supreme Economic Court of the Republic of Tajikistan applied or to be applied in respect of a citizen or a legal entity in a particular case. Nowadays, subjects that are entitled for appeal are not only the law and its subjects to conformity to the Constitution, but also any regulatory act of the state and public bodies, as well as guidelines on plenums of the Supreme Court and the Supreme Economic Court of the Republic of Tajikistan. It was highlighted that the concept of “constitutional control” in Tajikistan, along with other existing subjects, successfully fulfils its function of protecting the Constitution and ensuring the supremacy of the constitution. The Constitutional Court of the Republic of Tajikistan by its characterisation fully corresponds to the nature and purpose of modern constitutional control bodies. Regarding the secretariat, in Tajikistan, secreterial function is carried out by the Office of the Constitutional Court of the Republic of Tajikistan, which is a component of the Constitutional Court of the Republic of Tajikistan and was established according to the provisions of Article 77 of the Constitutional Law of the Republic of Tajikistan “On Constitutional Court of the Republic of Tajikistan.” According to the requirements of this Article of the Constitutional Law, the Office of the Constitutional Court fulfils informative, research advisory, and other supplementary work.

*This Chairman Summary is the summary of deliberations from the meeting. Should there be any inconsistency in this summary, please refer to the recorded file.*

15. The Thailand Delegation expressed their appreciation to Indonesia and the AACC for holding the event. In the presentation, the Thailand Delegation highlighted the significance of the Constitution of the Kingdom of Thailand 2007 and its relevance to the protection of the rights and liberties of the people. The Constitutional Court is the supreme court deciding on constitutional matters. As such, it performs the important function of safeguarding the supremacy of the Constitution and serves as a judicial body that recognises and protects the rights and liberties of the people and translates into reality these constitutional ideals. Even after the 2007 Constitution had been repealed, section 45 of the Interim Constitution 2014 provided for an establishment of the jurisdiction of the Constitutional Court to review the provision of law from being contrary to or inconsistent with the Constitution. The scope of powers and duties of the Constitutional Court under the 2007 Constitution can be categorised into the following functions: 1) constitutional review of laws and draft laws so as to prevent any contrariness or inconsistencies with the Constitution; 2) powers and duties in relation to the protection of rights and liberties of the people as guaranteed by the Constitution; 3) powers and duties in relation to public participation in the governance and the inspection of the exercise of State powers; 4) adjudication of disputes pertaining to the powers and duties of two or more organs with respect to the National Assembly, Council of Ministers or non-judicial constitutional organs; 5) ruling on whether or not a treaty must be approved by the National Assembly; and 6) powers and duties stipulated by the Organic Act on Political Parties (2007).
16. The Turkey Delegation stated their pleasure in attending the meeting and their gratitude to the AACC and Indonesia for holding the event. The Turkey Delegation stated that the constitutional court in Turkey was established based on 1961 Constitution, which was later amended in 1982 and again in 2010. Following the 2010 amendment, the Constitutional Court in Turkey comprises of 17 members with 12 years tenure and obligatory retirement over the age of 65. Following the 2010 constitutional amendments, there also has been an increase in the decision-making bodies of the Court since previously, the Court used to take its decisions only in the form of plenary. After the introduction of individual application, two Sections and three Commissions under each Section have been established comprising Plenary, Sections, Commissions, Rapporteurs and General Secretariat. It is also important to note that Turkey has an individual application mechanism regarding violation of human rights or civil rights that have been neglected by state bodies to the Constitutional Court under the 2010 amendment. Applications can be made after the individuals have exhausted all available national remedies or legal avenues.

*This Chairman Summary is the summary of deliberations from the meeting. Should there be any inconsistency in this summary, please refer to the recorded file.*

According to statistics however, the number of individual applications made to the constitutional court is decreasing

17. The Uzbekistan Delegation expressed its deepest gratitude to Indonesia for superior organisation of such an interesting and beneficial meeting. The delegation explained that the Constitutional Court in Uzbekistan is a body that has the functions of constitutional adjudication and the hearing of cases related to the constitutionality of legislative and executive acts. The Constitutional Court and its judges are independent in their activity and subordinate solely to the Constitution. Basic rules governing constitutional adjudication are determined by the Constitution, the Law on the Constitutional Court and the Rules of Procedures of the Constitutional Court. In addition, the Uzbekistan Delegation also mentioned that the Secretariat exists in order to ensure that the activities of the Constitutional Court maintain focus on the main objective of the apparatus, which is to provide organizational, technical, analytical, reference, financial and economic support to the Constitutional Court. The Secretariat of the Constitutional Court consists of about 20 persons, including chief experts, experts and the other staff. There is also a Scientific-Advisory Council which consists of prominent lawyers, law professors and other professionals who act on a pro-bono basis. The Council advises the judges on various matters.
18. During the Question and Answer session, the Russian Delegation provided clarification with regards to a mistake during their presentation, namely that the number of civil servants serving in the Secretariat is 155, not 150,000 as previously stated.
19. During the Question and Answer session, the Afghanistan Delegate questioned Turkey regarding the background of their judges, specifically that of the 17 judges serving in the Constitutional Court, the Afghanistan Delegate understood that some were without legal background. Turkey responded that this was indeed the case and that while some of the judges were from legal backgrounds, others were elected from amongst high bureaucrats.
20. Afghanistan also asked about Turkey's mechanism regarding judicial review in cases where an individual claims that a decision of the court is unconstitutional. Turkey replied that there was indeed provision for this but that any individual hoping to make such a claim must first exhaust all other available options, including appeal to the Court of Appeals, and that the claim must also be covered by the European Convention on Human Rights and the Turkish Constitution.

*This Chairman Summary is the summary of deliberations from the meeting. Should there be any inconsistency in this summary, please refer to the recorded file.*

21. Indonesia asked three delegations, namely, Korea, Russia and Turkey, what substantive support is provided to their Courts by their researchers, experts and judge rapporteurs respectively.
22. Russia responded that the secretariat provides preliminary reviews of complaints of federal constitutional law, specifically to check for mistakes and for compliance with formal requirements. The Secretariat also prepares analytical materials observing the constitutional practices of other countries.
23. Korea then explained that their secretariat receives cases, which are then passed on to research officers for preliminary review. The Secretariat has two groups of researchers, one of which is general researchers for common cases and the other being assigned to specific judges.
24. Finally, Turkey replied that in their Court individual applications are passed on to the judge rapporteur, who then provides administrative inspection to ensure nothing is missing from the application and then inspects the violations as argued within to create a report and abstract decision. Said report and abstract decision are then brought to the members who will decide upon the matter.

*This Chairman Summary is the summary of deliberations from the meeting. Should there be any inconsistency in this summary, please refer to the recorded file.*

## --- AGENDA ITEM 2 ---

### **Preparation for Board of Members Meeting and the Third Congress**

1. The Delegations were briefed on the upcoming meeting of the Board of Members. The Indonesian Delegation, in its capacity as the Term President of the Association, informed that, in pursuance to Article 15 of the Statute of the Association, a meeting of the Board of Members would be convened on 15th and 16th August 2015 in Jakarta in preparation for the Third Congress and that the meeting would be followed by an International Symposium.
2. The Delegations were then briefed on the Agenda for the meeting of the Board of Members, which comprised of 6 items, namely, Admission of the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic; Time and Venue of the Third Congress of the Association; Working Themes of the Third Congress; States and Institutions to be Invited to the Third Congress; Financial Issues of the Third Congress; Any Other Business.
3. In relation to the first item on the Agenda for the Meeting of the Board of Members, the Delegations were informed that on 18th June 2014, Indonesia as the Term President of the Association had received from the Constitutional Chamber of the Supreme Court of Kyrgyzstan the necessary letters and documents for application for membership to the Association and distributed the said documents to all Members of the Association by letter, dated 28th October 2014. This letter was attached with the Agenda for the Meeting of the Secretary-Generals. The Delegations were further informed that the Constitutional Tribunal of Myanmar had, through the Constitutional Court of the Republic of Korea, expressed intention to join the Association but that no official application had yet been received by the President of the Association. All Delegations were reminded to inform their Heads of Court that the admission of the Constitutional Chamber of the Supreme Court of Kyrgyzstan to the Association

*This Chairman Summary is the summary of deliberations from the meeting. Should there be any inconsistency in this summary, please refer to the recorded file.*

and, pending official application, the Constitutional Tribunal of Myanmar would be discussed and decided upon at the meeting of the Board of Members.

4. The Delegations were then briefed on the intention of the President of the Association to convene the Third Congress of the Association in April 2016. In accordance with Articles 13 and 21 of the Statute of the Association, the Board of Members has the competence to fix the date and venue of meetings of Congress. It is further reiterated that Congress should be held every two years. The Delegations were briefed that they should inform their respective Heads of Institution that the Time and Venue of the Third Congress would be discussed and decided upon at the Meeting of the Board of Members and that Indonesia, as the Term President proposed the Congress be held in Nusa Dua, Bali in April 2016, two years after the Second Congress in Istanbul.
5. The Delegations were also briefed that, in accordance with article 13 of the Statute, the Board of Members has the competency to fix themes and topics for the Meetings of Congress and that, in accordance with Article 3, themes should cover the following: the protection of human rights; the guarantee of democracy; the implementation of the rule of law; the independence of constitutional courts and equivalent institutions, and the cooperation and exchange of information and experience amongst members. In light of this, Indonesia, as the Term President, proposed the theme “Protection of Citizens’ Constitutional Rights”, which they felt fulfilled the provisions in Article 3 as well as maintaining consistency with the previous Congress themes as stated in the Seoul Declaration and the Istanbul Declaration, and briefed the Delegations that they should inform their Heads of Institution that the matter regarding working themes would be discussed and decided upon at the meeting of the Board of Members.
6. The Chairman briefed the Delegations that, in accordance with Articles 9, 10 and 13 of the Statute, which collectively regulate the Board of Member’s competence to admit and expel observers and guests Pursuant to Article 9, which states that any Member of the Board of Members may propose which observers should be invited to the Congress, the Board of Members Meeting would discuss the states and countries to be granted status of observer to the 3rd Congress. Delegations were further briefed to remind their Heads of Institution of the privileges granted to Observers, namely, to attend the Congress; to present a report on the specific themes of the Congress upon the prior request of the President of the Association; to respond to questions relating to their presentations; and to participate in the Association’s activities such as symposia, workshops, and seminars.

*This Chairman Summary is the summary of deliberations from the meeting. Should there be any inconsistency in this summary, please refer to the recorded file.*

7. With regards to financial issues of the Third Congress, the Chairman informed the Delegations that Indonesia as the Host of the Third Congress would cover all costs related to the Third Congress, including accommodation for the duration of the Third Congress and all local transport relevant to the activities of the Third Congress, not including Members' international airfares. All delegations were also requested to inform their Heads Institution that further details to the financial issues of the Third Congress would be discussed at the Board of Members Meeting.
8. The Delegations were briefed that the final item on the Agenda for the Board of Members Meeting would be "Any Other Business" and were requested to inform their Heads of Institution that they could take this opportunity to raise any other matters that they deemed necessary.
9. The Session also included briefings on the progress of the technical preparations for the meeting of the Board of Members. Delegations were asked to inform their Heads of Institution that, in short, accommodation and local transport for the duration of the Board of members Meeting would be arranged by Indonesia as the Host of the meeting. It was further clarified that accommodation provided would include one room for the Head of each Delegation and his/her spouse and two further rooms for up to a total of four accompanying delegates, while local transport would include only airport transfers and other transport related to scheduled activities of the Association and exclude international airfares. Further details could be found in the Logistic Note attached with the letter of invitation.
10. The Delegates were also briefed on the plan of the Term President of the Association to hold an International Symposium on Constitutional Complaint in Jakarta on 15th and 16th August 2015. The symposium would be divided into 3 sessions where selected members of Association are expected to give presentations on three subtopics, namely, Constitutional Complaint as an instrument to Protect Fundamental Rights of Citizens; Comparative Perspective on Constitutional Complaint; and Problems and Challenges in Dealing with Constitutional Complaint Cases. Indonesia announced that Members of the Association and guests including representatives of judiciary institutions from 30 countries, the Indonesian Government, as well as academics from local universities would be invited to attend the symposium.

*This Chairman Summary is the summary of deliberations from the meeting. Should there be any inconsistency in this summary, please refer to the recorded file.*

### --- AGENDA ITEM 3 ---

#### **Coordination of events, not only to coordinate calendars among member institutions but also to align those events with the aim of the Association**

1. The meeting discussed the programmes/activities of each member of the Association as follows:
  - a. The Korean Delegation shared its intention to publish a book of articles to commemorate 25 years since the founding of the Korean Constitutional Court and invited the Members of the Association to send articles from the Chief Justices or Presidents and Judges of their respective Institutions. A letter will be sent to Member Institutions regarding the article contributions.
  - b. The Malaysian Delegation stated that they will be hosting one international event on 27<sup>th</sup> July–12<sup>th</sup> August 2015 in celebration of the 100th anniversary of Magna Carta in the form of an international exhibition of human rights and democracy across commonwealth countries. The designated venues will be Putra Daya, Kuala Lumpur and Penang. The Malaysian Delegation explained that Magna Carta is an important document encapsulating the right to justice and fair trial. There also will be a human rights forum and a special session with Appellate Judges.
  - c. The Kazakhstan Delegation informed the Delegations that on 28<sup>th</sup>–30<sup>th</sup> August 2015, they will celebrate the 25th anniversary of the Republic of Kazakhstan Constitution and that many states will be invited by letter, which will be sent in June or July. The main purpose of the conference is to discuss the development of constitutional law in Kazakhstan and other invited states. The outcome of the conference will be in the form of a book. The venue will be in Astana, the Capital City of the Republic of Kazakhstan.

*This Chairman Summary is the summary of deliberations from the meeting. Should there be any inconsistency in this summary, please refer to the recorded file.*



## --- AGENDA ITEM 4 ---

### **Enhancing the role of Secretary-Generals of Members of the Association**

1. The meeting agreed that the roles of the Secretary General of the Association should be enhanced in view of supporting the works of the Association.
2. The Korean Delegation stated that they had prepared a paper explaining their initiative to establish a Permanent Secretariat of The Association. The secretariat could be in different forms, based on existing examples within other associations. By comparison, the European Group and the Portuguese Speaking group have a circular secretariat, similar to the existing condition for the Association of Asian Constitutional Courts and Equivalent Institutions, while others like the African Group have a Permanent Secretariat. Thus, the Korean Delegation suggested that the Association should establish a Permanent Secretariat. To begin, the functions of such Permanent Secretariat would have close consultation with the term President to assist in the organisation of regular meetings of the Secretary-Generals, Board of Members and Congress. This is comparable to the work of the Venice Commission, which successfully served as the secretariat of the World Conference on Constitutional Justice. The Permanent Secretariat is also expected to work closely with Turkey, particularly regarding the summer school programme, the joint study project on human rights and education (journals), and the promotion of exchange between member courts. Lastly, the Permanent Secretariat could provide specialised administrative support for the stable development of AACC including managing the Association website, assisting with membership applications and collecting and storing various information and materials. Based on the presentation from the Korean Delegation, the Permanent Secretariat will lay the foundation for increasing the Association's influence on the issues of Human Rights and Democracy in the Asian region. The Korean Delegation added that, if necessary, Korea stands ready to take the position of Permanent Secretariat and, in this regard, is willing to provide support in terms of geographical venue as well as human and non-human resources.

*This Chairman Summary is the summary of deliberations from the meeting. Should there be any inconsistency in this summary, please refer to the recorded file.*

The Korean Delegation further clarified that, although Korea is willing to pay most of the expenses, in order to encourage the participation of Members, a small token contribution (i.e. the publication of journal expenses) from other Member institutions would be accepted.

3. The Philippines Delegation stated their support for the Proposal from the Korean Delegation, with the caveat that all expenses are shouldered by Korea and suggested that the matter of the establishment of a Permanent Secretariat is requires further discussion at the meeting of the Board of Members. Regarding the aforementioned contribution for Journal Publication by member states, the Philippines Delegation suggested that, publications could be conducted through the Association website, resulting in minimal financial implications in this regard.
4. The Malaysian Delegation fully supported the proposal made by Korea but hoped that financial obligations pertaining to the establishment of a Permanent Secretariat would not burden the member countries.
5. The Russian Delegation stated that the President of its Russian Constitutional Court commissioned the Russian Delegation to support the Korean Proposal as it will strengthen the promotion of democracy and human rights in the region. However certain issues, chiefly financial, need to be explored in depth and as such, Russia stands ready to take part in any relevant discussion.
6. The Turkish Delegation stated that they are not against the fundamental proposal from Korea but that other Delegation Members that are willing to that the position of Permanent Secretariat and provide the relevant financial and non-financial support for such establishment should be given the opportunity to volunteer.
7. The Afghanistan Delegation also fully supported the proposal from Korea but expressed their opinion that fundraising efforts should not be the burden of only one country but maybe contributions from multiple countries to the establishment of such Permanent Secretariat could be considered.
8. The Indonesian Delegation echoed the thoughts and ideas shared by the other Delegations with regards to strengthening the role of the Secretary-General of the Association. The Indonesian Delegation added that, regardless of the differing views from the floor, in order to achieve this objective, as the first step, the AACC members need to review the Association Statute, particularly Articles 12 and 22. The Indonesia Delegation also suggested that AACC need to bring the deliberations on this issue

*This Chairman Summary is the summary of deliberations from the meeting. Should there be any inconsistency in this summary, please refer to the recorded file.*

to their respective Heads of Institution. The Delegation also suggested that there is a necessity to meet again one day prior to the meeting of the Board of Members to explore this issue further, for consideration by the Members who can then discuss and decide upon the matter at the Board of Members Meeting, which will be held on 14<sup>th</sup> August 2015.

9. The Phillippines Delegation also supported Indonesia's statement that there should be a review of the Statute of Association, particularly with regards to the expansion of Articles 12 and 22 in order to clearly state the expected function and role of the Secretariat General. Specifically, the second sentence of Article 12 should be amended to allow the Heads of Institution, if unavailable, to be replaced or substituted by the secretary general and to clarify the role of the secretary general. In Article 22, the review should include the enumeration of the specific functions of secretary general and the Permanent Secretariat, to be discussed in the congress next year. Since the proposal was amenable to all Delegations present, the Delegation also proposed to set a deadline for the Members to deliver their comments on the proposal to the Term President before the end of June, with a view to reducing the burden to the Heads of Institution at the Board of Members Meeting.

*This Chairman Summary is the summary of deliberations from the meeting. Should there be any inconsistency in this summary, please refer to the recorded file.*

## --- AGENDA ITEM 5 ---

### **Discussion on minutes of meeting and conclusion**

1. In conclusion, the Chairman noted that all delegates agree that the role of the Secretary-General is in need of strengthening, particularly through a review of the Association Statute. Therefore, the Chairman concluded that the Association should bring the deliberations on this issue to their respective Heads of Institution. The Secretary-General also reiterated the agreement to hold a meeting on 13<sup>th</sup> August 2015, one day prior to the meeting of the Board of Members to explore this issue further. In his last remark, the Chairman once again reminded all Delegations to report on this deliberation to their respective Heads of Institution.
2. The delegations also expressed their appreciation to the Secretary-General of the Indonesian Constitutional Court, in his capacity as the Secretary-General of the Term President of the Association, for organising this meeting of the Secretary-Generals of the Association and looked forward to the continued cooperative process in the future.

*This Chairman Summary is the summary of deliberations from the meeting. Should there be any inconsistency in this summary, please refer to the recorded file.*



**THE CONSTITUTIONAL COURT OF  
THE REPUBLIC OF INDONESIA**