

Ma. Angela Leonor C. Aguinaldo

East Meets West

Development of Mutual Legal Assistance
in Criminal Matters between and within
the Association of Southeast Asian Nations
and the European Union



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Ma. Angela Leonor C. Aguinaldo

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Abstract

The Association of Southeast Asian Nations (“ASEAN”) and the European Union (“EU”) have in 2019 entered into a strategic partnership, which includes a renewed commitment to pursue stronger cooperation in combating terrorism and transnational crime as well as improvements of their respective infrastructures. The present study is mainly interested on how mutual legal assistance (“MLA”) in criminal matters could develop between and within the ASEAN and the EU. The study applied a comparative criminal law approach in answering the research question by comparing the regional frameworks with each other as well as with their respective member state frameworks, which includes not only a look into the law in books but also the law in practice.

Mutual legal assistance can be further developed within and between the ASEAN and the EU if considerable weight is given to the two regional organizations’ distinguishing features which then become the basis to understand how they are as international actors in terms of their decision and policymaking: intergovernmentalism v. supranationalism, principle of non-intervention and the ASEAN Way v. normative and hegemonic power, and harmonization v. approximation. In sum, any interregional treaty would be successful if each would take into account the other’s values and neither party would dominate the determination of terms. Further, one must note that any lack of harmonization does not necessarily result in inefficiency of the cooperation mechanism. Member states are able to make the cooperation mechanism or mutual legal assistance work. The existence of approximation or the acceptance of minimum standards as well as open communication helps in building and maintaining (almost) smooth operations with each other.

Taking these into account, the present study came up with different suggestions ranging from the MLA within the regional frameworks (involving their own member states), the groundwork for the development of MLA between the two regional organizations, and suggestions for both substantial and procedural provisions that could be included in the possible MLA regime between the ASEAN and the EU. These suggestions mainly start with the least common denominators and non-negotiables of each regional organization in efforts to find agreement between the regional and member state frameworks.

Abstract

In summary, the comparative criminal approach used by the present study in comparing the regional frameworks of the ASEAN and the EU, and the respective member state frameworks of the Philippines, Malaysia, the UK, and Germany, including a comparison of the law in books and the law of practice, would ultimately show that a mutual legal assistance regime could indeed be developed between and within the ASEAN and the EU. There is no need for the imposition of will of one regional organization on the other on what it thinks the other should do or practice. Instead, by building a common understanding of their respective frameworks and that of the other, as well as a common acceptance of the minimum principles, ideals and norms based on their differences, a formal international cooperation mechanism is highly plausible.

Acknowledgments

“We are like the little branch that quivers during a storm, doubting our strength and forgetting we are the tree deeply rooted to withstand all life’s upheavals.” – Dodinsky

Undertaking a doctoral research and producing a written manuscript thereafter has not been an easy process. It can bring you to the highest peaks of lightness but it can also bring you to the deepest crevices of darkness. It speaks to the core of your humanity – your human personality – and tests your mental acuity, faith, resilience and courage especially in the darkest hours. It can be a lonely endeavor because you feel that you are left alone within the sphere of your individual research and undertakings. But then again, after undergoing such process I am deeply grateful that I made it through this bittersweet and rewarding endeavor. I have found a new sense of self and also, I discovered that I have always been deeply rooted to withstand all the upheavals.

How deep my roots go to withstand all the challenges of this research would have not been possible without the grace from the Almighty God. Thus, my gratitude should first go to Him. As He promised in Psalm 32:8, He guides me along the best pathway for my life and He shall advise me and watch over me. This entire work is a testament of God’s love and grace and it is only right that any glory should be given back to Him.

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The same amount of thanks belongs to my close friends and sisters here in Europe: Leah, Vena, and Chinky. Your moral support has been priceless and being here in Europe has been less lonelier knowing that the

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influencing the person I become. Thank you for reminding me of my non-negotiables, of who I am and who I can become, and being deeply rooted for the years to come. May I make you proud in the actions and decisions I make. God bless you always.

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Abbreviations

ACC	ASEAN Coordinating Council
ACDM	ASEAN Committee on Disaster Management
ACTC	ASEAN Center for Combating Transnational Crime
ADGC	ASEAN Directors-General of Customs
AEC	ASEAN Economic Community
AEMM	ASEAN-EU Ministerial Meetings
AFAS	ASEAN Framework Agreement on Services
AFM	ASEAN Finance Ministers
AFSJ	Area of Freedom, Security and Justice
AFTA	ASEAN Free Trade Area
AHRD	ASEAN Human Rights Declaration
AIA	Asian Investment Area
AICCM	Act on International Cooperation in Criminal Matters
AICHR	ASEAN Intergovernmental Commission on Human Rights
ALMM	ASEAN Law Ministers Meeting
AMLC	Anti-Money Laundering Council
AMMTC	ASEAN Ministers' Meeting on Transnational Crime
ARC	Asian Relations Conference
ARF	ASEAN Regional Forum
ARGUS	Networking of Rapid Alert Systems
ARO	Asian Relations Organisation
ASA	Association of Southeast Asian
ASC	ASEAN Security Community
ASCC	ASEAN Socio-Cultural Community
ASEAN	Association of Southeast Asian Nations
ASEAN MLAT	Treaty on Mutual Legal Assistance in Criminal Matters among Like-Minded ASEAN Member Countries
ASEAN-6	Association of Southeast Asian Nations Members Indonesia, Malaysia, Singapore, Thailand, Philippines, Brunei
ASEANAPOL	ASEAN Chiefs of Police Association
ASEAN-CMLV	ASEAN Members Cambodia, Myanmar, Laos, Vietnam

Abbreviations

ASEM	Asia-Europe Meetings
ASLOM	ASEAN Senior Law Officials' Meeting
ASOD	ASEAN Senior Officials on Drug Matters
ASP	ASEAN Surveillance Program
ASPAC	Asia and Pacific Council
BDSG	Federal Data Protection Act
CCP	Common Commercial Policy
CFI	Court of First Instance
CFR	Charter of Fundamental Rights
CFSP	Common Foreign and Security Policy
CICA	Crime (International Cooperation) Act of 2003
CIS	Customs Information System
CISA	Convention Implementing the Schengen Agreement
CIWIN	Critical Infrastructure Warning Information Network
CJA	Criminal Justice Act
CJEU	Court of Justice of the European Union
COMECON	Council for Mutual Economic Assistance
CPIB	Corrupt Practices Investigation Bureau
DEIO	Directive on the European Investigation Order
DFA	Department of Foreign Affairs
DG	Directorate-General
DGICM	ASEAN Directors-General of Immigration Departments and Heads of Consular Affairs of the Ministries of Foreign Affairs
DILG	Department of Interior and Local Government
DNA	Deoxyribonucleic Acid
DOJ	Department of Justice
DPP	Director of Public Prosecutions
DRET	Democratic Republic of East Timor
EAS	East Asia Summit
EAW	European Arrest Warrant
ECB	European Central Bank
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECOFIN	Council of Economic and Finance Ministers
ECRIS	Criminal Records Information System
ECSC	European Coal and Steel Community

ECST	European Convention on the Suppression of Terrorism
ECtHR	European Court of Human Rights
ECU	European Currency Unit
EDC	European Defence Community
EEA	European Economic Area
EEC	European Economic Community
EEW	European Evidence Warrant
EFSP	European Foreign and Security Policy
EFTA	European Free Trade Association
EIO	European Investigation Order
EJN	European Judicial Network
EJTN	European Judicial Training Network
EMS	European Monetary System
ENP	European Neighbourhood Policy
EPC	European Political Community
EPC	European Political Cooperation
EPCIP	European Programme for Critical Infrastructure Protection
EPG	Eminent Persons Group
EU	European Union
EURATOM	European Atomic Energy Community
EUROPOL	European Police Office
FCC	Federal Constitutional Court
FIU	Financial Intelligence Unit
FOI	Freedom of Information
FRETILIN	Revolutionary Front for an Independent East Timor
FSP	Foreign and Security Policy
GDP	Gross Domestic Product
HMRC	Her Majesty's Revenue and Customs
HRA	Human Rights Act
HSU	Heads of Specialist Trafficking Units
IAD	International Affairs Division
IAR	International Authority for the Ruhr
IBP	Integrated Bar of the Philippines
ICAC	Independent Commission against Corruption
ICCPR	International Covenant on Civil and Political Rights

Abbreviations

IGC	Intergovernmental Conference
IMF	International Monetary Fund
INTERPOL	International Criminal Police Organization
IRG	Gesetz über die internationale Rechtshilfe in Strafsachen (Act on International Cooperation in Criminal Matters)
JHA	Justice and Home Affairs
KPK	KomisiPemberantasanKorupsi (Corruption Eradicating Corruption)
MACC	Malaysian Anti-Corruption Commission
MACMA	Mutual Assistance in Criminal Matters Act 2002
MAPHILINDO	Regional Organization by Malaysia, Philippines and Indonesia
MLA	Mutual Legal Assistance
MLAT	Treaty on Mutual Legal Assistance
MOU	Memorandum of Understanding
NAM	Non-Alignment Movement
NATO	North Atlantic Treaty Organization
NBI	National Bureau of Investigation
NTS	Non-Traditional Security
OCSC	Office of the Chief State Counsel
OECD	Organization of Economic Cooperation and Development
OEEC	Organization for European Economic Cooperation
PACE	Police and Criminal Evidence Act 1984
PMC	Post-Ministerial Conferences
PNP	Philippine National Police
PNR	Passenger Name Record
RiVASt	Guidelines on International Cooperation in Criminal Matters (Richtlinien für den Verkehr mit dem Ausland in strafrechtlichen Angelegenheiten)
QMV	Qualified Majority Voting
SAR	Special Administrative Area
SEA	Single European Act
SEAC	Supreme Allied Command in Southeast Asia
SEANWFZ	Southeast Asian Nuclear Weapons Free Zone
SEATO	Southeast Asian Treaty Organization
SGP	Stability and Growth Pact
SIS II	Schengen Information System

SOMTC	Senior Officials Meeting on Transnational Crime
TAC	Treaty of Amity and Cooperation
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
ToA	Treaty of Amsterdam
TOC	Transnational Organized Crime
TOR	Terms of Reference
TREVI	Terrorism, Radicalism, Extremism, and International Violence
UK	United Kingdom
UKCA	United Kingdom Central Authority
UNCAC	United Nations Convention Against Corruption
UNCOC	United Nations Convention on Corruption
UNTOC	United Nations Convention on Transnational Organized Crime
USA	United States of America
VAP	Vientiane Action Programme
VIS	Visa Information System
VOC	Dutch East India Company (Vereenigde Oostindische Compagnie)
ZOPFAN	Zone of Peace, Freedom, and Neutrality

