Introduction

I. Background of the Study

A. Towards a Strategic Partnership between the Association of Southeast Asian Nations ("ASEAN") and the European Union ("EU")

On May 2017 the senior officials of the Association of Southeast Asian Nations ("ASEAN") and representatives of the European Union ("EU") discussed matters involving transnational crime during the same time period when the ASEAN Senior Officials held their annual Senior Officials Meeting on Transnational Crime ("SOMTC").[1] During said meeting there was an assurance among the ASEAN Senior Officials (and later, the discussion with EU representatives) of continued cooperation, especially as regards counter-terrorism, cyber security, and human trafficking, as well as an expressed interest in increasing cooperation with the International Criminal Police Organization ("INTERPOL") and European Union Agency for Law Enforcement Cooperation ("EUROPOL").[2]

Thereafter, during the ASEAN-EU Post-Ministerial Conference on August 2017, after the ASEAN Summit commemorating the 50th Anniversary of the ASEAN, the two regional organizations agreed on their second EU-ASEAN Plan of Action (2018-2022). Among the many things included in said Plan of Action is to enhance the ASEAN-EU Cooperation in the ASEAN-led security architecture. This includes the ASEAN enhancing dialogue and promoting cooperation with the EU on defense and security matters, such as in the area of counter-terrorism.[3] Further, there is a plan of action to combat terrorism, transnational crimes, and address other non-traditional security issues, including, but not limited to, (1) reviewing the implementation of the ASEAN-EU Work Plan to Combat Terrorism and Transnational Crime (2014-2017), and prepare for the next generation work plan that takes into account new mutually agreed priority areas; (2) convening the ASEAN Senior Officials Meeting on Transnational Crime – EU Consultations in the margins of the annual ASEAN SOMTC

1 *European Council*, pp. 1-10.
2 *European Council*, pp. 1-10.
3 *European Council*, pp. 1-11.

on a regular basis, in accordance with SOMTC processes to promote dialogue and cooperation on ways to tackle different aspects of transnational crime of mutual concerns; and (3) promoting interaction between national law enforcement agencies in the ASEAN member states and EUROPOL, aimed at strengthening the cooperation among them by providing mutual support as well as facilitating the exchange of best practices and expertise in the areas of mutually agreed interests.[4]

On 21 January 2019, both regional organizations took the decision to elevate their relationship to a Strategic Partnership during the EU-ASEAN Ministerial Meeting. Cooperation on regional and international issues were discussed. In line with this, one of the priority areas for 2019 is enhanced security cooperation, including counter-terrorism, transnational crime, maritime security, and cybersecurity. This includes the commitment to strengthen connectivity between the two regional organizations, which is consistent with their agreement to take new steps in undertaking region-to-region agreements.

B. Long-Standing Relationship between the ASEAN and the EU

To put things in their proper context, the ASEAN gives primordial consideration to its external relations. The ASEAN believes in "inclusiveness" and espouses political and economic openness to the rest of the world.[5] It believes that it is necessary to remain open to constructive relations with the rest of the world and be inclusive in its approach to regional endeavors should one want stability and security in the Southeast Asian region.[6] ASEAN's dialogue partners include Australia, Canada, China, the European Union, India, Japan, the Republic of Korea, New Zealand, Russia, and the United States.[7] Dialogues between ASEAN and its external partners were initially economically motivated but later have evolved to include political and security dimensions, with such dialogues being held during the ASEAN Foreign Minister's Annual Post-Ministerial Conferences with dialogue partners.[8]

4 EU-ASEAN Plan of Action, § 1.3.
5 *Severino*, p. 5.
6 *Severino*, pp. 13, 25; *Severino,* ASEAN: What It Cannot Do, p. 5.
7 *Severino,* ASEAN: What It Cannot Do, p. 5; *Tiwari*, p. 31.
8 *Severino,* ASEAN, p. 25; *Tiwari,* p. 31.

With respect to the European Union, the ASEAN as early as 1972 – or only six years since its establishment – has fostered a dialogue partnership with the European Economic Community ("EEC"), the European Union's predecessor.[9] This dialogue partnership with the ASEAN was motivated by the economic and political interests of the EEC to be able to access prospering Asian economies and improve its foreign policy profile.[10] An added bonus was to minimize the participation of the United States and Soviet Union in the region during the peak of the Cold War.[11] Further, stimuli was further provided during the 1970's when Vietnam invaded Cambodia and the Soviet Union invaded Afghanistan: both condemned these invasions and supported each other's positions in the international fora.[12]

In spite of this, the differences in approaches between the two organizations started to unveil: while the principle of non-interference is the basis of the formation of the ASEAN, European integration was grounded on pooling of the sovereignty of its member states in some areas.[13] Di Floristella writes that the ASEAN institutional design is premised on the historical circumstances of the region where "because of the need to consolidate the independence of post-colonial states, and to preserve national sovereignty against external influences, ASEAN elites opted for loose modes of cooperative security and non-interference."[14] Considered likewise herein is the diversity among the ASEAN member states in terms of political and government systems, levels of economic development, religious and cultural traditions, as well as legal systems,[15] to which EU member states would have a difficult time internalizing because conversely they share more or less similar and common Christianity roots, socio-political systems, levels of economic development, and legal systems especially in continental Europe.[16] Therefore, there ought to be an expectation that the ASEAN and its member states would resist the idea of pooling each one's sovereignty and to adopt in general binding instruments of crises

9 *Flers*, p. 2; *Tiwari,* p. 31.
10 *Flers,* p. 2.
11 *Flers,* p. 2.
12 *Flers,* p. 3.
13 *Flers,* p. 3.
14 *Di Floristella*, p. 24.
15 *Di Floristella,* p. 24. See also *Pasadilla*, pp. 2-3.
16 See for example *Hirst*, pp. 11, 22-25.

management that tend to intrude or interfere on the other's domestic affairs.[17]

Other than the stark difference in applicable paradigms, it can be said that the beginning years of the dialogue partnership between the ASEAN and the EU were generally dormant and did not have any concrete or sizeable development in terms of true cooperation.[18] During the Cold War, the ASEAN showed great interest in the integrationist, economic, likewise external trade qualities of the EEC.[19] This great interest was seemingly not reciprocated however and it was only in 1974 when this partnership was rediscovered – or rather, the interest of the EU strengthened – when Hans-Dietrich Genscher was inaugurated as West Germany's Foreign Minister and the external dimension of European Political Cooperation went beyond the Middle East and focused on Asia, and with it, the ASEAN.[20]

The existing ASEAN-EU dialogue partnership paved way to a more formal relationship through the 1980 European Community-ASEAN Cooperation Agreement, which included enhanced cooperation in areas concerning community development, commerce, economic and cultural developments and exchanges.[21] It likewise institutionalized the ASEAN-EU Ministerial Meetings ("AEMM"), which occurs once every two years.[22] Notably, the ASEAN member states in the late 1980's were strongly seen as recipients of EC donations and financial aid due to the weaker economic position of most ASEAN member states.[23] This translated to an inevitably weaker bargaining position on the part of ASEAN member states in the negotiation table in terms of ASEAN-EC cooperation.[24] Imagining it differently, the financial dole outs given by the EC and thereafter the EU could have been used as the needed "carrots" attached to a stick of proposals and policies the EC/EU wanted to implement.

This did not mean however that the ASEAN member states were willing and able to give in easily to the demands of the EC/EU. After the end of the Cold War, the EC/EU shifted towards demanding the inclusion of human rights and democracy clauses in the EC/EU-ASEAN cooperation, including therein policies of conditionalities, while providing links

17 *Di Floristella,* p. 24.
18 *Flers,* p. 3.
19 *Maier-Knapp*, p. 80.
20 *Maier-Knapp,* p. 80.
21 *Flers,* p. 3.
22 *Weatherbee*, p. 113.
23 *Flers,* p. 3.
24 *Flers,* p. 3.

between trade and aid to issues of human rights and democratization.[25] This was not taken lightly by the ASEAN member states and were perceived as unacceptable interference in their domestic affairs.[26] While the EC/EU felt empowered with the obligation to promote human rights and if the circumstances call for it, to interfere in the domestic orders of other countries, the ASEAN member states remained adamant and unwilling to discuss issues of human rights and democratization, instead insisted on their norms of regional conduct and cooperation.[27] This is especially the case with the ASEAN primordial principle of non-intervention, which former Singapore Prime Minister Goh Chok Tong underlined its importance as follows: "We don't set out to change the world and our neighbors. We do not believe in it. The culture of ASEAN is that we do not interfere."[28]

The "interference" by the EU also runs conflict to the so-called ASEAN Way or consensus approach, which is reflected in the ASEAN processes and structures.[29] A signature form of diplomacy of the ASEAN,[30] the ASEAN Way is in stark contrast to the general formal legalism prevalent in its western counterpart, which follows a different decision-making model usually involving (qualified) majority voting in the Council or the supranational authority itself makes decisions in behalf of its member states.[31] In brevity, the ASEAN Way of diplomacy reflects the Malay cultural practices of *musjawarah* and *mufukat*, which respectively requires leaders to make decisions not by imposing their own will unto others "but by gently pushing a community decision to the appropriate direction" through consensus and requiring participants to consider the larger interests of the community.[32]

An integral component of this ASEAN Way is the utilization of quiet diplomacy in the ASEAN. Although the organization cannot often resolve issues of contention between its member states, it can compartmentalize and set them aside so that these issues and problems would not be stumbling blocks that would prevent cooperation in other areas.[33] Over time, the disputants ideally find these areas of contention become less con-

25 *Flers,* p. 3.
26 *Flers,* p. 4.
27 *Flers,* p. 4.
28 *Flers,* p. 4.
29 *See Narine, pp. 17-20.*
30 *Narine, p. 18.*
31 *Davidson*, pp. 165, 167. See also *Di Floristella,* p. 24.
32 *Di Floristella, p. 24; Narine, p. 18.*
33 *Narine, p. 19.*

tentious as other relationships, interests, and issues develop to offset the problem(s).[34] In the meantime, the ASEAN member states go their separate ways while concealing their differences behind ambiguous language.[35] Narine cites Antonik, who defines these qualities as "restraint, respect, and responsibility", which are three key principles imperative to the survival of the regional order.[36]

Considering the different and often conflicting values between the ASEAN and the EU, there is a paradox surrounding their continued cooperation and partnership. Amidst their clashing of values there remains peace between the two organizations. It is quite plausible that the ASEAN quiet diplomacy and the normative power of the EU has allowed the two regional organizations to continue their cooperation and partnership. One can look into the Asia Strategy of 1994, a comprehensive document that not only evinces the post-Cold War rediscovery of Asia and the ASEAN but likewise reveals details involving not only economic, political and security cooperation but as well as cultural cooperation reflected in the various dialogue fora in which both the ASEAN and EU meet.[37] Such was followed by the launching of the Asia-Europe Meetings ("ASEM"), which was launched in 1996 and conducted once every two years, alternating between Asia and Europe, with Asian and European ministers meeting each other in between summits.[38]

In the face of this continued, and beforehand "renewed" and "revitalized",[39] dialogue partnership and cooperation agreement between the ASEAN and the EU, their partnership did not escape criticism. Despite the existing interregional relationship between the two regional organizations, the quality of the relationship between the two regional organizations had allegedly changed and became sidelined, or rather occupied just a small puzzle piece in a pan-Asian approach.[40] A reading of the European Commission's ("EC") document on Southeast Asia of 2003 shows, as cited by Maier-Knapp, that in the cooperation between the ASEAN and the EU "the political dialogue should, to the extent possible, concentrate on

34 *Narine, p. 19.*
35 *Narine, p. 19.*
36 *Narine, p. 19.*
37 *Maier-Knapp,* p. 80.
38 *Weatherbee,* pp. 113-114.
39 *Maier-Knapp,* p. 80.
40 *Maier-Knapp,* p. 80.

region to region subjects of interest and concern, leaving global issues to ASEM."[41]

Additionally, Maier-Knapp mentioned that another critical issue left unanswered then, was the nature of EU's true colors in its partnership with the ASEAN, not least because of the EU's nebulous way of coining its normative and material interests. Especially considering that the EU's rhetoric of "stability, partnership, and friendship" towards the ASEAN and the multi-sectoral and multi-dimensional relationship between the two regional organizations "that echoes traces of a common lifeworld" were incompatible with how the two organizations tried to reach a deeper and meaningful cooperative relationship, and how the EU has manifested its actorness inconsistently, patchily, and on a case-to-case basis in the ASEAN and its member states.[42]

One can easily trace back how the EU acted as a "friend" to the ASEAN through different incidents that not only further obscures the picture of the EU as a value-lecturing economic actor in the Southeast Asian region but also raises doubts towards how the EU is truly willing to act on its commitments and undertakings in the region.[43] It is without doubt that the EU projects its normative core values in its partnership agreements with the ASEAN member states in accordance with the goals of its external actions (which as mentioned above the ASEAN and its member states believe to be undue influence).[44] This is despite the underlying tension existing due to the clash of values of each regional organization. In fact, the ASEAN and the EU truly clashed in the issue involving the admission of Myanmar to the ASEAN in 1997, which led to an impasse in ASEAN-EU relations. The EU and its member states found it utterly unacceptable that some are willing to give the time of day to Myanmar considering the various human rights violations and atrocities happening in the country. Henceforth, the EU and its member states imposed sanctions on Myanmar since its membership to the ASEAN for its failure to protect human rights and follow processes of democratization.[45] Contrastingly, the ASEAN viewed the political instability and human rights problems as a purely domestic matter with which the ASEAN should not interfere.[46] Further,

41 *Maier-Knapp,* p. 80.
42 See *Maier-Knapp,* pp. 77, 80, 97.
43 *Maier-Knapp,* p. 81.
44 *Maier-Knapp,* p. 81.
45 *Flers,* p. 5.
46 *Flers,* p. 5.

the ASEAN was of the position that denying Myanmar membership would have been a violation of the Bangkok Declaration of 1967 (the founding instrument of the ASEAN), which opens membership to all countries in the Southeast Asian region.[47]

Notwithstanding this constant push of the EU to put human rights and democratization in the agenda of its relationship with the ASEAN, there seems to be a want of meaningful, concrete engagement on the part of the EU to make true its commitment. In other words, the EU seemingly fails to deliver on its own undertakings in its reciprocal obligation arrangement with the ASEAN. For instance, when the ASEAN and its member states were confronted with non-traditional security ("NTS") crises, such as the 2003 Avian influenza outbreak, 2004 tsunami and political conflict in Aceh (province in Indonesia), 2005 Asian Financial Crisis, the direct support given by the EU through its different institutions was described as a "mere drop to the bucket" because regardless of any financial support it gave, the EU did not actively participated in providing the needed technology transfer or know-how to resolve these issues.[48] What it could have given, it did not give.

Moreover, one could look into how the EU reacted during the October 2002 terrorism attack in Bali, Indonesia. Terrorism and extremism was made top priority in the international and interregional security agenda since the 11 September 2001 terrorist attacks in the United States.[49] Although the ASEAN member states did not buy totally into the idea that Southeast Asia was the second front of the United States on its War on Terror due to certain sensitivities to its Muslim population and resentments toward foreign intervention,[50] there were some ASEAN member states that cooperated actively with the United States and Australia after the bombings in Bali, Indonesia especially on coordinated actions and counter-terrorism measures.[51]

Conversely, the EU adopted a lesser direct approach. The European Commission was the initial responder on behalf of the EU but due to the national-centric nature of the attacks, which falls under the competence of the European Council, as well as the varying degree of effects and consequences to the ASEAN member states, the breadth of regional assis-

47 *Flers,* p. 5.
48 *Maier-Knapp,* pp. 80-91.
49 *Maier-Knapp,* p. 91.
50 *Caballero-Anthony*, p. 213; *Weatherbee*, pp. 192-193.
51 *Maier-Knapp,* p. 92.

tance and/or response was limited.[52] Further, while the European Council in behalf of the EU made its conclusions immediately after the attacks, declaring its willingness to provide the needed assistance and support Indonesia and the ASEAN needs in its counter-terrorism measures, the actual response was limited and mostly declaratory.[53] The majority of the assistance afforded by the EU was a patchwork of individual efforts by its member states and anything else was deemed for long-term goals such as capacity building and the like, as well as construed as complementary to the assistance and cooperation given by the US and Australia to the ASEAN member states.[54] It also became apparent that attention was not wholly given to the Southeast Asian region because by then, not only did the counter-terrorism and extremism measurers employed by the EU focused on the Middle East and Central Asia, but moreover, the EU was confronted on terrorism attacks on its territory, starting with the attacks in Madrid in 2004, two years after the Bali bombings.[55]

These circumstances and interesting dynamics, together with the recently minted strategic partnership between the ASEAN and the EU, as well as the second EU-ASEAN Plan of Action that intends to enhance cooperation in defense, security, and criminal matters, (including counter-terrorism measures) altogether raises interesting questions. As a start, there is already the existing partnership and endeavor to further cooperate in criminal and security matters. There is also the knowledge of how this partnership has been in all points of cooperation between the two regional organizations. By having this baseline knowledge, it would be easier to discern strategy as to what steps ought to be taken next should these two regional organizations really intend in fostering enhanced cooperation in criminal matters with one another.

At the outset, it is known that the EU boasts of an intricate criminal justice architecture in its regional framework that facilitates both informal and formal cooperation in criminal matters. Among the many formal arrangements, there is the European Arrest Warrant for extradition requests between member states and the more recently European Investigation Order that tackles mutual legal assistance or cross-border and transborder access to information and evidence. Contrastingly, the ASEAN member states have not been remiss in pushing for enhanced cooperation in crim-

52 *Maier-Knapp,* pp. 92-93.
53 *Maier-Knapp,* p. 93.
54 *Maier-Knapp,* p. 93.
55 See *Argomaniz*, pp. 7-10.

inal matters within their regional framework.[56] As early as the Bangkok Declaration of 1967, there was a call already to have an ASEAN Extradition Treaty but until now, this is left to be desired. And yet, the pervasiveness and seriousness of transnational crime such as terrorism in the region continuously exists. Significantly, this is not mutually exclusive to the ASEAN region alone but has arguably spillover effects throughout the world, including the European continent. Having this in mind, the ASEAN so far only has the 2004 Treaty on Mutual Legal Assistance in Criminal Matters Among Like-Minded ASEAN Countries (hereinafter "ASEAN MLAT") as the only regional instrument for international cooperation in criminal matters that serves the purpose of improving the effectiveness of the law enforcement authorities of the treaty´s parties in "the prevention, investigation, and prosecution of offenses through cooperation and mutual legal assistance in criminal matters."[57]

Despite the disparity in legal frameworks, as well as the undeniable disparity and clash in values, principles, and practices, the discussion of how to develop an interregional cooperation in criminal matters between the ASEAN and the EU becomes more interesting because should the two regional organizations pursue a meaningful and effective enhanced cooperation, MLA between the two regional organizations would undeniably have a great value added to the enhanced partnership. However, this needs to be done in a manner that takes into account the characteristics, non-negotiables, and needs of both parties. Further, it necessitates an understanding and consideration of what truly happens in the member state frameworks because, regardless of how intricate the interregional instrument the two organizations would come up with, if said instrument is unimplementable in the member state levels or impossible to operationalize therein, then the whole exercise would be futile and everything would be left in rhetoric and declaratory statements, which is the prevalent criticism not only against the European Union in terms of its cooperation with the ASEAN, but also the ASEAN as a regional organization itself.[58] In this respect, the

56 *Pushpanathan*, pp. 23-26.

57 *See* 2004 Treaty on Mutual Legal Assistance in Criminal Matters signed on 29 November 2004 in Kuala Lumpur, Malaysia, 29 November 2004, 2336 U.N.T.S. 271 (entered into force 01 June 2005), Preamble. [hereinafter "ASEAN MLAT"].

58 ASEAN has often been criticized due to the alleged mismatch of its political will with the actual response being given by the member states. Nguyen also notes the lack of harmonization of laws among the ASEAN countries as something negative for the ASEAN. See *Nguyen*, p. 387. In the same vein, Emmers mentions

present study is most interested in knowing how mutual legal assistance in criminal matters can be developed within and between the ASEAN and the EU considering that mutual legal assistance would be the perfect baseline agreement for enhanced cooperation in criminal matters as both regional frameworks have existing mutual legal assistance regimes already in their respective systems. Notwithstanding the general provisions stated in the EU-ASEAN Second Action Plan, development within and between the ASEAN and the EU would be a means to concretize the joint endeavor for cooperation. And interestingly, a study has yet to be made on this question, especially on comparing and contrasting the existing ASEAN and EU mutual legal assistance frameworks and providing possible consequences for development and cooperation on the basis of analyzing both.

II. Objectives of the Study

Taking the foregoing into account, the study "East meets West? The Development of Mutual Legal Assistance in Criminal Matters within and between the Association of Southeast Asian Nations and European Union" is interested in knowing **how could inter-regional mutual legal assistance in criminal matters develop between and within the Association of Southeast Asian Nations ("ASEAN") and the European Union ("EU").** In answering this question, the present study shall have the following five objectives:

1. To know the historical development of the ASEAN and the EU, including the historical development of their respective regions that influenced not only the establishment of these regional organizations but also their different principles and norms, as well as the historical development of the two regional organizations' international cooperation mechanisms in criminal matters, specifically on mutual legal assistance, and the respective legal frameworks applicable to these mechanisms;
2. To know the historical development of international cooperation in criminal matters, specifically mutual legal assistance, as well as the legal framework for it (including substantive and procedural provisions) in selected member states of the ASEAN and the EU, which includes a

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that the ASEAN suffers from insufficient resources allocated to its designated agencies in the fight against transnational crime and terrorism, and domestically, there is the situation of gaps and disparities in the legal framework. *Emmers*, pp. 419-438; *Nguyen,* p. 387.

study of how a sample member state from each region implements mutual legal assistance through law and practical information (law in the books v. law in practice);

3. To compare and contrast the mutual legal assistance frameworks of ASEAN and EU on criminal matters with their respective member state frameworks by knowing the present state of the mutual legal assistance framework on criminal matters and its application in the ASEAN and the EU, including a study of how a sample member state from each region is implementing the same, formally and informally, through law and practical application;
4. To compare and contrast the ASEAN and the EU regional frameworks with each other, including a comparison of their respective historical developments, institutional frameworks, fundamental principles, norms and practices, and their existing mechanisms of mutual legal assistance vis-à-vis how the same is implemented in their respective member state frameworks;
5. To evaluate, analyze and anticipate the problematic issues and problems with respect to the respective frameworks and provide recommendations for improvement, harmonization, revision, etc., when appropriate, and whether there could be a (further) development of mutual legal assistance in criminal matters between and within the ASEAN and the EU.

In relation to the first objective, the respective historical developments of each regional organization include the historical development of their respective regions which could provide a better and holistic understanding of each regional organization's underpinnings vis-à-vis their respective principles, norms, practices, and decision and policymaking processes. Admittedly, historical development does not necessarily provide a barometer for predicting the future decisions and policies of both the ASEAN and the European Union, including its member states. Nevertheless, historical development starting from that of the region, expanding further to the establishment and development of the ASEAN and the EU would help understand the dynamics occurring within the regional organizations, between the member states, and how the said underpinning governs internal mechanisms and external relations with possible dialogue partners or cooperation mechanisms, because these decisions, policies, and/or developments arguably emerge "from unique historical circumstances and will likely evolve in its own particular way."[59]

59 See *Acharya*, p. 327; *Benda*, p. 111; *Evans*, p. 303; *Osborne*, p. 17.

III. Methodology

In view of the foregoing objectives, the present study adopts the following five main steps:

1. Regional-level analysis of ASEAN and EU vis-à-vis mutual legal assistance in criminal matters;
2. Member state level analysis, which refers to the respective member state frameworks of the ASEAN and the EU and likewise incorporates an evaluation and/or analysis of the member states' available legal frameworks and their practical implementation and/or application (law in the books v. law in practice);
3. Comparison of the ASEAN and the EU regional frameworks with their respective member state frameworks in terms of the available legal frameworks (substantive and procedural provisions), mainly addressing questions of implementation, transposition, and/or translation to the member states of regional level legal frameworks, as well as problems and issues encountered in relation hereto;
4. Comparison of the ASEAN and the EU with each other, incorporating herein the development of their respective principles, practices, and values, existing cooperation mechanisms, approach to regional security, and mutual legal assistance, as well as taking into account the transposition or implementation of regional policies in member state frameworks, efficiency and respect for human rights; and
5. Evaluation, analysis, and anticipation of problematic issues and problems with respect to the respective frameworks on mutual legal assistance in criminal matters of ASEAN and EU, and discussion of the (possible) development of mutual legal assistance in criminal matters between and within ASEAN and EU.

A. Regional-level analysis

In the regional-level analysis of ASEAN and EU, it is imperative to look into each regional organization's historical development, functional framework, and underlying institutional foundations and/or principles to have a better understanding of their legal initiatives vis-à-vis mutual legal assistance in criminal matters. To do so, desktop and literature review, study of available records, and content analysis was done to capture data without prejudice to the use of a longitudinal approach should there be a need to further elucidate the situation prior to and after the enactment of both

the ASEAN and EU MLA framework on criminal matters. Qualitative interviews have additionally been done to capture the motivations behind the development of the ASEAN and EU mutual legal assistance in criminal matters regimes, respectively.

B. Member state level analysis

Member state level analysis focuses on the development, implementation, functioning vis-à-vis mutual legal assistance in criminal matters in both ASEAN and EU. Although the present study could have limited itself with a regional level analysis, it analyzed selected member state frameworks of each regional organization to have a clearer and sounder grassroots knowledge of how regional level policies, decisions, and legal frameworks translate on the member state levels. The present study likewise adopted this step to better discern and assess the better ways to pursue the development of mutual legal assistance between and within the regional frameworks.

1. Selection of member state samples

The present study concedes to the impossibility of gathering data from all of the member states of both the ASEAN and EU. Given this constraint, analysis was limited to two sample member states per regional organization.

As regards the ASEAN, focus was given to the Philippines and Malaysia, two of the original ASEAN member states and earliest signatories of the ASEAN MLAT. The Philippines has a unique legal system of both Anglo-Saxon common law and civil law. Further, it adopts a strong position against transnational crime within the ASEAN.

On the other hand, Malaysia is a predominantly common law country with a separate Islamic law system. It is through Malaysia's initiative that the ASEAN MLAT came into fruition. Hence, both the Philippines and Malaysia could provide good insights and examples as to the current state and practice of mutual legal assistance in criminal matters in the ASEAN region.

As regards the EU, focus was on the United Kingdom and Germany. Both Germany and the United Kingdom have domestic legislation on international cooperation in criminal matters, including mutual legal assistance and the application of the European Investigation Order as regards

other EU member states. In line with this, Germany espouses a continental form of legal system and inquisitorial kind of criminal proceedings. On the other hand, the United Kingdom is the most important common law country in the EU. Like the Philippines and Malaysia, the United Kingdom follows the adversarial system, wherein two advocates represent their parties' positions before an impartial person or group of people, usually a judge or jury, who attempt to determine the truth of the case.

At this juncture it must be mentioned that the United Kingdom has been the first EU member state to engage Article 50 TEU and exit the European Union.[60] From 01 January 2021 the European Investigation Order shall cease to apply and new rules for judicial cooperation such as mutual legal assistance are provided for by the new EU-UK Trade and Cooperation Agreement.[61] The said Agreement shall provide the new legal basis in terms of surrender, mutual legal assistance, freezing and confiscation, and exchange of criminal record information.

These developments have not changed the fundamental aim of the present study, namely, to examine and analyse the development of mutual legal assistance within and between the ASEAN and the EU, including the legislative and practical implementation of the European Investigation Order in the member state level. The choice of the United Kingdom still remains relevant as not only because the new Trade and Cooperation Agreement contains earmarks of the principles and practices of the EIO, but also because UK as a common law country should be contrasted with a continental country in Europe to broaden the insights to be gained in pursuit of this study's objectives.

2. Historical development, legal framework, and implementation

Akin to the regional level analysis, desktop review together with agency records, and content and secondary analysis was applied to discover historical development, legislative evolution, and the existing legal framework vis-à-vis mutual legal assistance in criminal matters.

60 *Gordon*, p. 21; *van Wijk*, p. 155.

61 For specific provisions governing law enforcement and judicial cooperation in criminal matters, one can refer to Part Four of the Trade and Cooperation Agreement Between the European Union and the European Atomic Energy Community, of the One Part, And The United Kingdom Of Great Britain And Northern Ireland, of the Other Part dated 30 December 2020.

Given the importance of discerning the difference on what is provided in the books and how the law is applied in practice, interviews were conducted to ascertain practical application and/or implementation. In light of this, three to four authorities or experts were interviewed per member state. While a higher number of interviews would be desirable, there were time and communication constraints that prevented this. Nonetheless, the persons interviewed for the present study are either the main representatives and point persons for mutual legal assistance and/or international cooperation in criminal matters within their respective central authorities, administrative department and agencies, or law enforcement agencies, or they are practicioners directly involved or invested in the practice of international cooperation in their respective countries, i.e. judicial authorities, Eurojust representatives, central or executing authorities.

Moreover, it needs to be clarified that the present study is not empirical in nature. Rather, the interviews and personal communication are meant to be supplementary in nature and give out details in practice not necessarily disclosed in literature or in other academic studies. Moreover, the interviews were meant to analyze the grassroots of the situation to better grasp how the MLA frameworks work per regional and member state level.

C. Comparison of the Regional Frameworks with their respective Member State Frameworks

After analyzing the regional frameworks of the ASEAN and the EU, and of the respective member state frameworks under each one, the next step taken is to compare the regional frameworks with their respective member state frameworks. Through the exercise of comparing and contrasting the regional and member state frameworks, the study determined not only whether and to what extent the international requirements have been implemented in the national legal systems, but also the existing gaps, problems, and issues that ought to be addressed in the mutual legal assistance regime within each regional framework. This step was focused in comparing and contrasting mainly the historical development of the MLA frameworks, existing legal framework, and the different substantive and procedural provisions.

D. Comparison and Contrast of ASEAN and EU Frameworks

As a condition precedent in evaluating both frameworks on mutual legal assistance in criminal matters in terms of the different problems and issues they encounter, a neutral comparison of both frameworks is done. This entailed two components. The first component involved the regional frameworks by themselves. This involved looking into four (4) aspects drawn out from a comparison of the ASEAN and the EU: (1) the development of respective principles, ideals, and norms within each organization; (2) existing cooperation mechanisms; (3) approach to regional security; and (4) mutual legal assistance in criminal matters.

By understanding these features, there would be a better picture of the running mechanisms of each regional framework, including the motivations on what influences these mechanisms to run. Further, there is the understanding of how a particular regional framework views cooperation and how it would act and/or decide on a particular partnership or cooperation mechanism, such as mutual legal assistance in criminal matters.

The second component looks into the micro level, or the member state frameworks in relation to the regional framework. This included looking firstly into the transposition or implementation of the regional agreement to the domestic level. Similarities, differences, and even idiosyncrasies were highlighted to gauge not only how influential the regional frameworks are in influencing domestic policies but how member states remain true to the ideals or provisions being promoted on a regional level. This included a look into certain characteristics highlighted by the law in practice, which are not necessarily apparent in the law in the books.

Included likewise in the evaluation of the member state frameworks is a look into the efficiency aspect and protection of human rights. This mirrors the sword and shield function of criminal law and can thus be described as to how efficient member states are in fostering cooperation and how they respectively value the protection of human rights. Again, similarities, differences, and idiosyncrasies would be mentioned herein.

E. Evaluation, Analysis, and Anticipation; Lessons learned

The last portion of the present study proves to be the most crucial. In view of any development between and within the two regional organization of further cooperation in criminal matters through mutual legal assistance, there was the need to further internalize the results of the next preceding

step and evaluate certain issues and problems surrounding the present regional and member state frameworks of mutual legal assistance in criminal matters in the ASEAN and the EU.

The first component of this analysis and evaluation was to identify lessons that could be learned. Herein three aspects or values of each regional framework were analyzed, on the basis of what has been previously learned: (1) intergovernmental v. supranational natures in relation to being formal v. informal; (2) the ASEAN principle of non-intervention v. normative power of the EU; and (3) harmonization v. approximation. Values would be considered against each other in efforts to discern what needs to be learned from each one. This is again in furtherance of the research question of how to develop mutual legal assistance between and within the ASEAN and the EU.

Based on the foregoing steps, the next component is to provide suggestions for the development of mutual legal assistance within and between the ASEAN and the EU. This last step includes four parts. The first part involves the mutual legal assistance within the respective regional frameworks. It considers what could be improved, what could be retained in the present framework, etc. This is to be followed by the needed groundwork: what ought to be kept in mind in moving forward with the development of the cooperation mechanism between the regional organizations. Thereafter, the third part and fourth part would be the substantive and procedural provisions, respectively, that could constitute the MLA agreement between the two regional frameworks.

IV. Structure of the Study

In view of the foregoing, the present study is structured into four (4) main parts. Part 1 and Part 2 focused on regional orders of the ASEAN and the EU respectively. Each part is composed mainly of four (4) parts: (1) regional framework, (2) member state framework of first sample member state, (3) member state framework of second sample member state, and (4) comparison of the regional framework with the member state frameworks. Anent the first part on regional framework, the historical development of the regional organization was incorporated along with the historical development of the region from where these organizations were established, including their respective institutional and legal frameworks, and framework on cross-border cooperation, in particular the one involving mutual legal assistance.

As regards the member state frameworks, it incorporated the historical evolution of international cooperation mechanisms and the existing legal framework on mutual legal assistance.

Thereafter, the regional and member state frameworks are compared with one another using the same parameters previously provided, i.e. historical development, substantive provisions and procedural provisions.

Part 3 focused on the comparison between the ASEAN and EU. This part is then divided into two components, with one focusing on the regional frameworks themselves while the other focuses on the member state frameworks. Included in the first component is the (1) discussion of how the principles, practices, and norms developed in each regional organization, (2) existing cooperation mechanisms, (3) approach to regional security, and (4) mutual legal assistance; whereas the second component on member state frameworks shall encompass (1) transposition of law in the member states, (2) efficiency, and (3) protection of human rights.

Part 4 is mainly the evaluation and analysis part of the study wherein using the results from the previous part, lessons learned were derived, including the values needed to be taken into account should one formulate proposals or suggestions for the development of mutual legal assistance within and between the ASEAN and the EU. On the basis of these lessons to be learned, the second step discussed the groundwork needed to be done to develop mutual legal assistance within the regional organizations. Following this are suggestions for the possible substantive and procedural provisions that can be taken into account should an interregional mutual legal assistance be made between the ASEAN and the EU.