

Overview of Contents

Abbreviations	25
Introduction	31
I. Background of the Study	31
II. Objectives of the Study	41
III. Methodology	43
IV. Structure of the Study	48
Part 1: The Association of Southeast Asian Nations (ASEAN)	50
I. Regional Framework	51
II. Implementation in the member state level: Philippines	158
III. Implementation in the member state level: Malaysia	238
IV. Comparing the Philippines and Malaysia with the Regional Framework	280
Part 2: The European Union	307
I. Regional Framework	308
II. Implementation in Member State: United Kingdom	493
III. Implementation in Member state: Germany	546
IV. Comparing the United Kingdom and Germany with the Regional Framework	584
Part 3: Comparing and Contrasting the ASEAN and the EU	608
I. Comparing the Regional Frameworks	608
II. Comparing the Member State Frameworks with Each Other	645

Overview of Contents

Part 4: Developing Mutual Legal Assistance between and within the ASEAN and the EU	661
I. Lessons Learned	661
II. Suggestions for Developing Mutual Legal Assistance: Least Common Denominators	668
Summary, Conclusion and Further Recommendations	681
Bibliography	687

Table of Contents

Abbreviations	25
Introduction	31
I. Background of the Study	31
A. Towards a Strategic Partnership between the Association of Southeast Asian Nations (“ASEAN”) and the European Union (“EU”)	31
B. Long-Standing Relationship between the ASEAN and the EU	32
II. Objectives of the Study	41
III. Methodology	43
A. Regional-level analysis	43
B. Member state level analysis	44
1. Selection of member state samples	44
2. Historical development, legal framework, and implementation	45
C. Comparison of the Regional Frameworks with their respective Member State Frameworks	46
D. Comparison and Contrast of ASEAN and EU Frameworks	47
E. Evaluation, Analysis, and Anticipation; Lessons learned	47
IV. Structure of the Study	48
Part 1: The Association of Southeast Asian Nations (ASEAN)	50
I. Regional Framework	51
A. Historical Development	51
1. From Early Southeast Asia to Modern Southeast Asia	52
a. Early Southeast Asia	52
b. Building empires and colonies: East-West Relationship	55
c. The Times of War	59
d. New challenges while paving avenues for regional cooperation	65
	13

2. Historical Development of the ASEAN	80
a. Consolidation Stage	80
b. Expansion Stage	89
c. Reconsolidation Stage	90
B. Present Institutional and Legal Framework	104
1. ASEAN as a Regional Organization	105
2. The ASEAN Organizational Structure	109
a. ASEAN Summit	110
b. ASEAN Coordinating Council	110
c. ASEAN Community Councils and ASEAN Sectoral Ministerial Bodies	111
d. ASEAN Secretary-General and ASEAN Secretariat	112
e. Committee of Permanent Representatives to the ASEAN	113
f. ASEAN National Secretariats	114
g. ASEAN Intergovernmental Commission on Human Rights (“AICHR”)	114
3. ASEAN Fundamental Principles, Norms, and Practices	115
a. Constitutional Principles	116
b. Normative Principles	120
c. Decision-making norms: ASEAN Way	120
C. Cross-border movement of evidence: ASEAN Mutual Legal Assistance in Criminal Matters	123
1. Historical Development of ASEAN Mutual Legal Assistance	123
2. Substantive Provisions: ASEAN MLAT	135
a. Applicability of Assistance	135
b. Types of Mutual Legal Assistance	137
c. Compatibility with Other Arrangements	137
d. Principles, Conditions, and Exceptions Applicable	138
i. Sufficiency of Evidence	138
ii. Dual Criminality	139
iii. Double Jeopardy	140
iv. Substantive Considerations of Human Rights	141
1. Human Rights as a Ground to Refuse a MLA Request	142
2. Limited Applicable Human Rights Obligations vis-à-vis Ground for refusal; Severity of Punishment Issue	143
v. Reciprocity	144
vi. Speciality or use limitation	145
vii. Special Offenses and National Interest Cases	145

3. Procedural Provisions: ASEAN MLAT	147
a. Designation of Central Authorities	147
b. Preparation of Requests under the ASEAN MLAT	148
i. Requirements for Requests	148
ii. Person or Authority Initiating the Request	150
c. Execution of Requests	151
i. Applicable Law on Execution	151
ii. Applicable Procedural Rights	152
1. Importance of Defense Rights	152
2. Human Rights Considerations in Procedures Provided	153
3. Defendant's Participation in the Execution of a MLA Request	155
iii. Time Element on Execution	155
iv. Authentication of Documents	156
v. Importance of Confidentiality	156
vi. Return of Documents	157
vii. Specific Procedures per Type of Assistance Rendered	157
II. Implementation in the member state level: Philippines	158
A. Historical Development of Mutual Legal Assistance in Criminal Matters in the Philippines	158
1. Bilateral, Regional, and Multilateral MLA Treaties	158
2. Domestic Instruments on Mutual Legal Assistance	159
B. Substantive Provisions: Mutual Legal Assistance in Criminal Matters	163
1. Applicability of Assistance	163
2. Types of Assistance Rendered	165
3. Compatibility with other Agreements	169
4. Principles, Conditions, and Exceptions	171
a. Sufficiency of Evidence Requirement	172
b. Dual Criminality	180
c. Double Jeopardy	182
d. Substantive Considerations of Human Rights	185
i. Human Rights Considerations as Grounds to Refuse	186
ii. Limited Applicable Human Rights Obligations vis-à-vis Grounds to Refuse; Severity of Punishment Issue	192
e. Reciprocity	197

Table of Contents

f. Speciality or Use Limitation	198
g. Special Offenses and National Interest Cases	199
C. Procedural Provisions on Mutual Legal Assistance	200
1. Designation of Central Authority	200
2. Preparation of Requests	201
a. Requirements for Requests	201
b. Person or Authority Initiating the Request	203
3. Execution of Requests	204
a. Applicable Law on Execution	204
b. Applicable Procedural Rights	205
i. Importance of Defense Rights; Human Rights Considerations in MLA and Criminal Processes in General	205
ii. Human Rights Considerations in MLA and Criminal Processes in General	205
iii. Defendant's Participation in the Refusal or Execution of a MLA Request	217
c. Applicable Time Element on Execution	224
d. Authentication of Documents	226
e. Importance of Confidentiality	230
f. Return of Evidence	231
g. Specific Procedures per Type of Assistance	233
III. Implementation in the member state level: Malaysia	238
A. Historical Development of Mutual Legal Assistance	238
1. Bilateral, Regional, and Multilateral Mutual Legal Assistance Treaties	238
2. Domestic Legislation on Mutual Legal Assistance	239
B. Substantive Provisions: Mutual Legal Assistance in Criminal Matters	241
1. Applicability of Assistance	241
2. Types of Assistance Rendered	242
3. Compatibility with Other Agreements	244
4. Principles, Conditions, and Exemptions	245
a. Sufficiency of Evidence	246
b. Dual Criminality	247
c. Double Jeopardy	247
d. Substantive Considerations of Human Rights	252
i. Applicable Human Rights Obligations vis-à-vis Mutual Legal Assistance	252

ii. Limited Applicable Human Rights Obligations vis-à-vis Grounds to Refuse; Severity of Punishment Issue	253
e. Reciprocity	258
f. Speciality or use limitation	259
g. Special Offenses and National Interest Cases	259
C. Procedural Provisions: Mutual Legal Assistance	262
1. Designation of Central Authority	262
2. Preparation of Requests	263
a. Requirements for Requests	263
b. Person or Authority Initiating the Request	266
3. Execution of Requests	266
a. Applicable Law on Execution	266
b. Applicable Procedural Rights	267
i. Importance of Defense Rights; Human Rights Considerations in MLA and Criminal Processes in General	267
ii. Human Rights Considerations in MLA and Criminal Processes in General	270
iii. Defendant's Participation in the Refusal or Execution of a MLA Request	272
c. Applicable Time Element on Execution	274
d. Authentication of Documents	275
e. Importance of Confidentiality	278
f. Return of Evidence	278
g. Specific Procedures per Type of Assistance	279
IV. Comparing the Philippines and Malaysia with the Regional Framework	280
A. Need for Implementing Legislation and Harmonization of Legal Framework	281
B. Substantive Provisions	284
1. Applicability of Assistance	284
2. Types of Mutual Legal Assistance	286
3. Compatibility with other Arrangements	287
4. Principles, Conditions, and Exceptions	288
C. Procedural Provisions	297
1. Usage of Vertical Cooperation in Mutual Legal Assistance: Central Authorities	298
2. Preparation of Requests	298

Table of Contents

3. Execution of Requests	300
a. Applicable Law	300
b. Applicable Procedural Rights	301
c. Applicable Time Limits	302
d. Authentication of Documents	303
e. Confidentiality	305
f. Return of Documents	305
g. Specific Procedures	306
Part 2: The European Union	307
I. Regional Framework	308
A. Historical Development	308
1. Early Modern Ages	308
a. Europe in the Early Ages	308
b. Building Empires and Colonies: East-West Relationship	314
c. The Times of War	323
d. New challenges while paving avenues toward regional integration	340
2. European Union's Historical Development	357
a. Consolidation Stage	357
b. Expansion Stage	361
c. Reconsolidation Stage	369
B. Present Institutional and Legal Framework	375
1. European Union as a Regional Organization	375
2. EU Organizational Structure	387
a. Commission	388
b. European Parliament	392
c. European Council	397
d. Council	397
e. Court of Justice of the European Union	399
3. EU Fundamental Principles, Norms, and Practices	402
a. Constitutional Principles	403
b. Normative Principles	409
c. Decision-making principles	409
C. Cross-border movement of evidence: European Investigation Order	414
1. Historical Development of Mutual Legal Assistance in the EU	414

2. Substantive Provisions: European Investigation Order	442
a. Applicability of Assistance	442
b. Types of Assistance	443
c. Compatibility with other Arrangements	444
d. Principles, Conditions, and Exceptions Applicable	447
i. Sufficiency of Evidence Requirement	447
ii. Dual Criminality	448
iii. Double Jeopardy	450
iv. Substantive Considerations of Human Rights	456
1. Human Rights Obligation as Ground to Refuse Recognition or Execution	456
2. Applicable Human Rights Obligations vis-à-vis Ground for refusal	462
v. Reciprocity	466
vi. Speciality or use limitation	471
vii. Special Offenses and National Interest Cases	474
3. Procedural Provisions: European Investigation Order	476
a. Designation of Issuing and Executing Authorities	476
b. Preparation of Requests	478
i. Requirements for Requests	478
ii. Person or Authority Initiating EIO	479
c. Execution of Requests	480
i. Applicable Law on Execution	480
ii. Applicable Procedural Rights	482
1. Importance of Defense Rights in the EIO	482
2. Human Rights Considerations in Procedures Provided in the Recognition or Execution of an EIO	483
3. Defendant's Participation in the Recognition or Execution of an EIO	485
iii. Applicable Time Element on Execution	488
iv. Authentication of Documents	491
v. Importance of Confidentiality	491
vi. Return of Evidence	492
vii. Specific Procedures per Type of Assistance	493
II. Implementation in Member State: United Kingdom	493
A. Historical Development	493
1. Bilateral, Regional, and Multilateral Mutual Legal Assistance	493
2. Domestic Legislation on International Cooperation	496

Table of Contents

B. Substantive Provisions	498
1. Applicability of Assistance	498
2. Types of Assistance	502
3. Compatibility with other Arrangements	504
4. Principles, Conditions, and Exceptions Applicable	506
a. Sufficiency of Evidence Requirement	506
b. Dual Criminality	507
c. Double Jeopardy	508
d. Substantive Considerations of Human Rights	514
i. Human Rights Obligation as Ground to Refuse Recognition or Execution of EIO	514
ii. Applicable Human Rights Obligations vis-à-vis Ground for refusal	516
e. Reciprocity	519
f. Speciality or Use Limitation	523
g. Special Offenses or National Interest Cases	524
C. Procedural Provisions	528
1. Designation of Central Authority	528
2. Preparation of Requests	531
a. Requisites for Request/EIO	531
b. Person or Authority Initiating the EIO	531
3. Execution of Requests	533
a. Applicable Law on Execution	533
b. Applicable Procedural Rights	534
i. Importance of Defense Rights; Principle of Equality of Arms	534
ii. Human Rights Considerations in Procedures Provided in the Recognition and Execution of an EIO	535
iii. Defendant's Participation in the Recognition or Execution of an EIO	539
c. Applicable Time Limits	542
d. Authentication of Documents	545
e. Importance of Confidentiality	545
f. Return of Documents	545
g. Specific Procedures per Type of Assistance	546

III. Implementation in Member state: Germany	546
A. Historical Development	547
1. Bilateral, Regional, and Multilateral Mutual Legal Assistance	547
2. Domestic Legislation on International Cooperation	549
B. Substantive Provisions	549
1. Applicability of Assistance	549
2. Types of Assistance	551
3. Compatibility with other Arrangements	552
4. Principles, Conditions, and Exceptions Applicable	553
a. Sufficiency of Evidence Requirement	553
b. Dual Criminality	554
c. Double Jeopardy	556
d. Substantive Considerations of Human Rights	559
i. Human Rights as a Ground to Refuse Recognition or Execution of an EIO	559
ii. Applicable Human Rights Obligations vis-à-vis Ground for refusal	561
e. Reciprocity	563
f. Speciality or Use Limitation	566
g. Special Offenses or National Interest Cases	568
C. Procedural Provisions	572
1. Designation of Central Authority	572
2. Preparation of Requests	573
a. Requisites for the Request/EIO	573
b. Person or Authority Initiating the EIO	575
3. Execution of Requests	575
a. Applicable Law on Execution	575
b. Applicable Procedural Rights	577
i. Defense Rights in the Context of Fair Trial Rights	577
ii. Human Rights Considerations in the Procedures Provided	579
iii. Defendant's Participation in the Recognition or Execution of an EIO	580
c. Applicable Time Limits	581
d. Authentication of Documents	583
e. Importance of Confidentiality	583
f. Return of Documents	583
g. Specific Procedures per Type of Assistance	584

Table of Contents

IV. Comparing the United Kingdom and Germany with the Regional Framework	584
A. Historical Development of Mutual Legal Assistance: Existence of Domestic Legislation	584
B. Substantive Provisions	586
1. Applicability of Assistance	586
2. Types of Assistance	588
3. Compatibility with Other Agreements	589
4. Principles, Conditions, and Exceptions	590
C. Procedural Provisions	598
1. Usage of Horizontal Cooperation; Designation of Authorities	598
2. Preparation of Requests	599
3. Execution of Requests	601
a. Applicable Law on Execution	601
b. Applicable Procedural Rights	603
c. Applicable Time Limits	605
d. Authentication of Documents	606
e. Confidentiality	607
f. Return of Documents	607
g. Specific Procedures	607
Part 3: Comparing and Contrasting the ASEAN and the EU	608
I. Comparing the Regional Frameworks	608
A. Development of Principles, Norms and Practices	609
B. Existing Cooperation Mechanism	617
C. Approach to Regional Security and International Cooperation	623
D. Mutual Legal Assistance in Criminal Matters	632
II. Comparing the Member State Frameworks with Each Other	645
A. Transposition of law in member states including law in practice	645
B. Efficiency	652
C. Protection of Human Rights and Defense Rights	653

Part 4: Developing Mutual Legal Assistance between and within the ASEAN and the EU	661
I. Lessons Learned	661
A. Intergovernmental v. Supranational; Formal v. Informal	661
B. Principle of Non-Intervention and the ASEAN Way v. EU Normative Power	665
C. Harmonization v. Approximation; Minimum Standards	667
II. Suggestions for Developing Mutual Legal Assistance: Least Common Denominators	668
A. Mutual Legal Assistance Within the Regional Frameworks	668
B. Groundwork for the Cooperation Mechanism between the ASEAN and the EU	671
C. Suggestions for Substantive Provisions	672
D. Suggestions for Procedural Provisions	677
Summary, Conclusion and Further Recommendations	681
Bibliography	687