


**NINETEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
Second Regular Session)**



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SENATE

P.S. RES. NO. 1023

Introduced by Senator Francis "Tol" N. Tolentino

RESOLUTION

CALLING FOR THE SENATE COMMITTEE ON NATIONAL DEFENSE TO CONDUCT AN INVESTIGATION IN AID OF LEGISLATION ON THE ALLEGED WIRETAPPING OF THE CHINESE EMBASSY IN MANILA AGAINST THE ARMED FORCES OF THE PHILIPPINES (AFP) WESTERN COMMAND (WESCOM)

WHEREAS, Section 1 of RA No. 4200, otherwise known as the Anti-Wiretapping Act, provides that:

"SECTION 1. It shall be unlawful for any person, not being authorized by all the parties to any private communication or spoken word, to tap any wire or cable, or by using any other device or arrangement, to secretly overhear, intercept, or record such communication or spoken word by using a device commonly known as a dictaphone or dictagraph or detectaphone or walkie-talkie or tape recorder, or however otherwise described:

It shall also be unlawful for any person, be he a participant or not in the act or acts penalized in the next preceding sentence, to knowingly possess any tape record, wire record, disc record, or any other such record, or copies thereof, of any communication or spoken word secured either before or after the effective date of this Act in the manner

prohibited by this law; or to replay the same for any other person or persons; or to communicate the contents thereof, either verbally or in writing, or to furnish transcriptions thereof, whether complete or partial, to any other person: Provided, That the use of such record or any copies thereof as evidence in any civil, criminal investigation or trial of offenses mentioned in section 3 hereof, shall not be covered by this prohibition.;

WHEREAS, on 6 May 2024, Chinese Foreign Ministry Spokesperson Lin Jian spoke at a press conference and gave the following statement:

"At the beginning of this year, China repeatedly negotiated with the Philippines' Western Command through diplomatic channels to reach a "new model" for Ren'ai Reef (Second Thomas Shoal) transportation and subsidy. The Philippines' military has repeatedly confirmed that this "new model" has been approved by the entire command chain including the Philippines' Defense Ministry, National Security Advisor and others. The new model was abandoned by the Philippines after being implemented once on February 2."

WHEREAS, on 7 May 2024 China has likewise threatened to release the transcript and audio recording of an alleged phone conversation that happened on January 3 between Chinese officials and Vice Admiral Alberto Carlos, Chief of the AFP-WESMINCOM, wherein the latter allegedly agreed to a "new model" in handling resupply missions to the BRP Sierra Madre;

WHEREAS, the recording allegedly discussed the "new model" of conduct in the West Philippine Sea that was claimed to be consented to by the top DND and AFP officers to wit, Defense Secretary Gilberto Teodoro Jr., National Security Adviser Eduardo Año, and AFP chief of staff Gen. Romeo Brawner;

WHEREAS on the same day, the Department of Foreign Affairs (DFA)¹ issued a statement emphasizing that only the President of the Republic of the Philippines can approve or authorize agreements entered into by the Philippine Government on matters pertaining to the West Philippine Sea and South China Sea:

¹ DFA Statement Further To The DFA Statement Issued on 5 May 2024, dated May 7, 2024

“In this respect, the DFA can confirm that no cabinet-level official of the Marcos Administration has agreed to any Chinese proposal pertaining to the Ayungin Shoal.

As far as the Philippine Government is concerned, no such document, record, or deal exists, as purported by the Chinese Embassy.”

WHEREAS, the Department of Foreign Affairs (DFA) even cautioned against falling for false narratives. Resorting to tactics such as releasing unverifiable recordings of supposed conversations with Philippine officials could demonstrate efforts to sow discord and confusion among Philippine agencies and the Filipino public;²

WHEREAS, the Department even reminded diplomats that they should strictly adhere to the 1961 Vienna Convention on Diplomatic Relations (VCDR), particularly Article 41 thereof, which states that “...it is the duty of all persons.....to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of that State.”;

WHEREAS, Gen. Brawner, one of the high-ranking officers mentioned in the wiretapped conversation vehemently denied agreeing to such a model, stating that:

“The AFP will not dignify the claim of the Chinese Embassy in Manila that our organization has agreed to a 'new model' for conduct in the Ayungin Shoal. China's claim of an audio recording allegedly between Vice Admiral Carlos and a Chinese diplomat does not merit significant concern as it appears to be a malign influence effort from the Chinese Communist Party (CCP).

Transcripts can easily be fabricated, and audio recordings can be manufactured by using deep fakes. These reports only aims to serve as a distraction from the China Coast Guard's ongoing aggressive behavior in the West Philippine Sea.”;

WHEREAS, while doubting the authenticity of the recording, Secretary Teodoro Defense Secretary Gilbert Teodoro Jr. called on the Department of Foreign Affairs to investigate the issue, which, if proven true, should result in

² DFA Statement on the Alleged Recording of a Conversation between a Chinese Diplomat and the AFP Western Command, May 9, 2024

the expulsion of said Chinese diplomat from the Philippines for admittedly violating the Anti-Wiretapping Law as well as rules on international relations;

WHEREAS, on the other hand, if the act of wiretapping is proven to be accurate, China should formally apologize to the Philippines for the illegal acts of their officials, waive their diplomatic immunity and let them face the consequences of their shameless and unbecoming act pursuant to Articles 9 (1)³ and 32⁴ of the Vienna Convention on Diplomatic and Consular Relations;

WHEREAS, as an alternative, the Philippines should consider recalling its ambassador to China and declaring said Chinese diplomat “persona non grata”;

WHEREAS, National Security Adviser Secretary Eduardo Año declared that “[t]hose individuals in the Chinese Embassy responsible for violating Philippine laws and the Vienna Convention on Diplomatic Relations and those responsible for these malign influence and interference operations must be removed from the country immediately.”⁵ Moreover, “[b]ypassing official and long established channels and protocols, talking to officials without the requisite authorities or bona fides, then maliciously claiming that alleged discussions should bind the PH government is farcical, foolish, and reckless,”⁶, he added;

WHEREAS, considering the importance and sensitivity of the matter, Philippine authorities should now take appropriate action to determine the extent of China’s interference in some of our critical infrastructure that may undermine our national security, make an accounting of all our vital infrastructure in relation to the same and provide remedial measures to address such interference for the purpose of minimizing if it cannot at all prevent the same;

³ Article 9 (1.) The receiving State may at any time and without having to explain its decision, notify the sending State that the head of the mission or any member of the diplomatic staff of the mission is persona non grata or that any other member of the staff of the mission is not acceptable. In any such case, the sending State shall, as appropriate, either recall the person concerned or terminate his functions with the mission. A person may be declared non grata or not acceptable before arriving in the territory of the receiving State.

⁴ Article 32 (1.) The immunity from jurisdiction of diplomatic agents and of persons enjoying immunity under article 37 may be waived by the sending State.

⁵<https://www.rappler.com/philippines/ano-wants-expulsion-chinese-diplomats-malign-influence-interference-operations/>

⁶<https://mb.com.ph/2024/5/10/ano-wants-chinese-embassy-people-linked-to-recorded-phone-convo-on-new-model-expelled-from-philippines>

WHEREAS, the international community should also call out China for its diplomatic official brazen act of defying the laws of the Philippines in violation of international law;


WHEREAS, it is regrettable that China is engaging in double talk, criticizing the Philippines for alleged non-adherence to basic norms of international exchanges but has the audacity to wiretap while in Philippine soil and even threaten and eventually release a recording and a transcript of an alleged conversation between a Chinese diplomat and ranking officer of the AFP;

WHEREAS, while a function of a diplomatic mission is to protect the interests of the sending state and its nationals in the receiving state, such must be done within the limits of international law.⁷ Further, another function of a diplomatic mission is to promote "friendly relations between the receiving and sending state"⁸ as such, its diplomatic agents should not conduct acts considered criminal in the receiving state;⁹

WHEREAS, these desperate tactics employed by the Chinese embassy should be stopped as they proliferate false information against our officials, thereby affecting our national security;

NOW, THEREFORE, BE IT RESOLVED, as it is hereby resolved, to call for the appropriate Senate Committee to conduct an investigation in aid of legislation on the alleged wiretapping of the Chinese Embassy in Manila against the Armed Forces of the Philippines Western Command, with the end in view of reviewing RA No. 4200 as well as the rules and regulations, and protocols of government officials while dealing with foreign officials.

Adopted,


FRANCIS "TOL" N. TOLENTINO
Senator

⁷ Article 3(b) of the Vienna Convention on Diplomatic Relations

⁸ Article 3(e) of the Vienna Convention on Diplomatic Relations

⁹ See Article 3 (d) - Ascertaining by all lawful means conditions and developments in the receiving State, and reporting thereon to the Government of the sending State;