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STATEMENT BY THE CANADIAN DELEGATION AT THE
80TH SESSION OF THE INTERNATIONAL COMMISSION
OF CONTROL AND SUPERVISION, SAIGON, JULY 27, 1973

DEPARTMENT OF EXTERNAL AFFAIRS
MINISTÈRE DES AFFAIRES EXTÉRIEURES

I believe the history of the detention and subsequent release of Captains Patten and Thomson, as well as of two Vietnamese in the employ of the International Commission of Control and Supervision, is well known to other delegations. At the suggestion of the Chairman, in order to facilitate the Commission's negotiations with the PRG for the release of the two Canadian Captains, the Canadian Delegation has refrained from making public statements on this matter. At this session, acting on instructions from the Canadian Government, I would now like to draw attention to those aspects of the case which must be of particular concern to all those who, like us, subscribe to the view that ICCS members were invited to Viet-Nam by the Parties, and while they are here are entitled, as clearly specified in the Agreement, to protection by the Parties and to full diplomatic immunity.

In the first place, when Captains Patten and Thomson were first detained on June 28, they were in Canadian uniform, carrying Canadian identification, and travelling in a vehicle with proper ICCS markings. Subsequently, however, they were told by their captors that they were "false ICCS", a phrase which seemed to mean either that they could not be considered real ICCS unless they were in the company of the other delegations and liaison officers, or that they might even be spies masquerading as Canadian ICCS members. Indeed it would appear that the PRG soldiers had specific instructions to secure so-called "false ICCS" members, and it was on the basis of these instructions that Captains Patten and Thomson were taken into custody.

In our view, to maintain that an individual or delegation does not have ICCS status unless in the company of representatives from the other three delegations and liaison officers constitutes a wholly unreasonable and unwarranted interpretation of the agreement and one which if applied by all the Parties in the same way would reduce the Commission to total impotence. For a variety of reasons the four-member delegations do not always work or travel together, and in this case it was impossible, because of commitments elsewhere, for the other delegations to accompany the Canadians. The question of liaison officers tends to be academic as long as the PRG does not deploy its Two-Party Joint Military Commission personnel to the regions. To maintain that the Canadian officers might have been spies—presumably American—driving around disguised as Canadians, is far fetched. In any case the soldiers who first encountered the

Canadians had a number of ways of verifying that they were members of the ICCS including use of the radio in the jeep in which they were traveling. What is even more disturbing is that the PRG, rather than bringing their concerns about "false ICCS" to the attention of the other parties and of the ICCS through its Two-Party Joint Military Commission delegation in Saigon, instead gave out orders to their soldiers which in effect jeopardized every member of the ICCS. This lack of respect for the ICCS, and this unwillingness to create safe conditions in which the Commission can operate, has been evident previously in the PRG's behaviour. The "false ICCS" concept is in our view part and parcel of the highly subjective attitude which the PRG has adopted toward the ICCS. There is little evidence of genuine good-will in this attitude, notwithstanding professions to the contrary by this Party.

Captains Patten and Thomson were held for eighteen days. For ten days of this time they were held incommunicado. It is worth noting that on July 2 the two officers were informed by their captors that they had been identified as ICCS and would be released following a talk with the PRG "district representative" who would arrive that afternoon or the next day. This "talk", however, did not materialize until July 5 and it was followed by a series of forced marches and further "talks", eventually with the PRG "province chief". From July 11 until their release on July 15 the two Captains were frequently put under pressure to sign what can only be called prepared confessions that they had been on a private trip and had entered PRG-controlled territory illegally. All during the time of their captivity Captains Patten and Thomson were denied even the treatment normally accorded prisoners-of-war; they had to make forced marches through the jungle under guard while bound by the hands and neck, they were subjected to political propaganda, they were deprived of their uniforms and on occasion, in the case of Captain Patten, suffered physical violence. Treatment of this sort for members of an International Commission is outrageous in the extreme, and must be nearly if not completely without precedent. It is certainly not the type of behaviour one would expect of a serious and responsible party, conscious of its moral and legal obligations under an agreement which it has itself signed.

Our two Canadian officers, members of a national delegation to the ICCS, were attempting to become familiar with their territory and to give the people of the area an opportunity of coming to know of the existence of the ICCS. Both of these objectives directly serve the interests of the work of the Commission; the Canadian officers concerned had obtained the agreement of the teamsite Chairman for their trip and had informed him of the exact route which they intended to follow. My Delegation rejects entirely suggestions that have been made that they were engaged in any improper activities. Moreover, since the areas controlled by the two South Vietnamese Parties have never been delimited and there was no reason to believe that the area in question was controlled by the PRG, it was manifestly impossible to hold the ICCS personnel responsible

for violating the sovereignty of any of the parties, particularly as the respect for sovereignty mentioned in the Agreement must be balanced against the Agreement's equally important provisions for freedom of movement.

The Canadian position, however, is that the nature of the duties being performed by ICCS officers in this case is irrelevant and that the Parties to the Agreement were bound to treat them as diplomatic agents under Article 12 "while carrying out their tasks". The Canadian Government, in agreeing to take part in the Commission, specifically informed the Parties, including the FRG, that "with respect to Article 12 of the Protocol concerning the International Commission of Control and Supervision, Canada will regard its nationals serving on the International Commission to be at all times carrying out their tasks during their service in Viet-Nam with the International Commission". Article 29 of the 1961 Vienna Convention on Diplomatic Relations, which is the international community's generally accepted position on the subject, says "The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving state shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity". Consequently, the Party to the Agreement concerned had an obligation to take all necessary measures to release the ICCS personnel concerned as soon as it was assured that they were, in fact, ICCS personnel. This the FRG manifestly failed to do and accordingly is in violation of Article 18 of the Agreement and Articles 10 and 12 of the Protocol concerning the International Commission of Control and Supervision.