

The Vietnam Accord: Inseparable Terms

To the Editor:

Although the immediate crisis over the prisoner-release issue seems to have eased, it is important to recognize that contrary to The Times' Feb. 28 editorial, the Nixon Administration's insistence that the prisoner-release provision is a separate matter linked only to the withdrawal of American troops—and that violations of the other terms of the Paris accord are irrelevant—is untenable as a matter of law. It is an elemental rule of international law, as well as domestic law, that one party can suspend compliance with a provision as long as the other party has failed to honor its obligations in a material respect.

Oppenheim's "International Law," probably the leading text in the field, cites to this effect a statement made by the U.S. Secretary of State Lansing during World War I:

"It would be manifestly unjust and untenable to require one party to an agreement to observe its stipulations and to permit the other party to disregard them."

Thus, if the U.S. were to resume bombing of North Vietnam, Washington obviously could not validly insist upon Hanoi's release of American P.O.W.'s even though American troops were being withdrawn on schedule.

Mr. Nixon is evidently unaware that the legal adviser to the State Department, in a memorandum entitled "The Legality of United States Participation in the Defense of Vietnam," dated March 4, 1966, sought to justify U.S. noncompliance with the 1954 Geneva Accords, citing "the international law principle that a material breach of an agreement by one party entitles the other at least to withhold compliance with an equivalent, correspondent, or related provision until the defaulting party is prepared to honor its obligations."

The suspension of mine-clearing operations by the United States was evidently justified, in Washington's view, by Hanoi's suspension of the release of American prisoners. But the protocol on mine-clearing makes no mention of nor is conditional upon prisoner release. How then can Washington justify its suspension of its mine-clearing obligation while denying Hanoi's right to suspend its prisoner-release obligation? What is sauce for the goose must be sauce for the gander.

JOSEPH H. CROWN

WILLIAM L. STANDARD

New York, March 1, 1973

The writers are co-chairmen of the Lawyers Committee on American Policy Towards Vietnam.