international, in preventing enterprises of the kind referred to. But in the representations, which I have had the honour lately to make, I beg to remind your Lordship, that I base them upon evidence, which applies directly to infringements of the municipal law itself, and not to anything beyond it."*

And on the 29th of September, 1863, writing with respect to the iron-clad rams at Birkenhead, he said—

"So far from intimating hostile proceedings towards Great Britain, unless the law, which I consider insufficient, is altered" (quoting words from a letter of Earl Russell) "the burden of my argument was to urge a reliance upon the law as sufficient, as well from the past experience of the United States, as from the confidence expressed in it by the most eminent authority in this kingdom."†

In answer to all these applications, Her Majesty's Government uniformly undertook to use their best endeavours to enforce this law, and to do so (notwithstanding a diversity of opinion, even upon the judicial Bench of Great Britain, as to its interpretation), in the comprehensive sense in which they themselves understood it, not only by penal, but by preventive measures (*i.e.*, by the seizure of any offending vessels before their departure from Great Britain), upon being furnished with such evidence as would constitute, in the view of British law, reasonable ground for believing that any of the prohibited acts had been committed, or were being attempted.

5. The three Rules of the Treaty of Washington.

When, therefore, Her Majesty's Government, by the VIth Article of the Treaty of Washington, agreed that the Arbitrators should assume that Her Majesty's Government had undertaken to act upon the principles set forth in the three Rules (though declining to assent to them as a statement of principles of international law, which were in force at the time when the claims arose), the effect of that agreement was not to make it the duty of the Arbitrators to judge retrospectively of the conduct of Her Majesty's Government according to any false hypothesis of law or of fact, but to acknowledge, as a rule of judgment for the purposes of the Treaty, the undertaking which the British Government had actually and repeatedly given to the Government of the United States, to act upon the construction which they themselves placed upon the prohibitions of their own municipal law, according to which it was coincident, in substance, with those Rules.

With respect to these three Rules, it is important to observe that not one of them purports to represent it as the duty of a neutral Government to prevent, under all circumstances whatever, the acts against which they are directed. The first and third Rules recognize an obligation (to be applied retrospectively upon the footing, not of an antecedent international duty, but of a voluntary undertaking by the British Government) "*to use*" within the neutral jurisdiction "*due diligence to prevent*" the acts therein mentioned; while the second recognizes a like obligation, "*not to permit or suffer*" a belligerent to do certain acts; words which imply active consent or conscious acquiescence.

III.—*Principles of Law relative to the diligence due by one State to another.*

6. General principles for finding what diligence is due.

The obligation of "due diligence," which is here spoken of, assumes under the first Rule expressly, and under the third by necessary implication, the existence of a "reasonable ground of belief;" and both these expressions, "due diligence" and "reasonable ground of belief," must be understood, in every case, with respect to the nature of the thing to be prevented, and the means of prevention with which the neutral Government is, or ought to be, provided. When the obligation itself rests, not upon general international law, but upon the undertaking of a neutral Government to enforce in good faith the provisions of its own legislation, the measure of due diligence must necessarily be derived from the rules and principles of that legislation. When the obligation rests upon the more general ground of international law, inasmuch as it is requisite, in the nature of things, that every obligation of a Government, of whatever kind, must be performed by the use of the lawful powers of that Government within the sphere of its proper authority, it will be sufficient if the laws of the neutral State have made such proper and reasonable provision for its fulfilment, as is ordinarily practicable, and as, under the conditions proper for calling the obligation into activity, may reasonably be expected to be adequate for that purpose; and if, upon the occurrence of the emergency, recourse is had, at the proper time and in the proper manner, to the means of prevention provided by such laws.

Nothing could be more entirely abhorrent to the nature, or more inconsistent with the foundations, of what is called international law, than to strain it to the exaction from

* British Appendix, vol. i, p. 216. † Ibid., vol. ii, p. 378.