under the law of nations, by virtue of this second Rule, which says that the use of "ports and waters as the base of naval operations, or for the purpose of the renewal or augmentation of military supplies or arms or the recruitment of men" shall not be allowed, and if the *facts* of such dealing shall be found, and the proof of due diligence to prevent them shall not appear in the proofs, under that second Rule all four of these cruizers must be condemned by the Tribunal.

I do not pass, nor venture to pass, in the present argument, upon the question whether there has been in this matter a lack of due diligence. In the discussion of my learned friend every one of these instances is regarded as a case not within the second Rule, and as a simple dealing in contraband of war.

*Sir Roundell Palmer.*—I must be permitted to say that I have not felt myself at liberty to go into a discussion of individual cases.

*Mr. Evarts.*—The vessels are treated in the Argument of the learned Counsel.

*Sir Roundell Palmer.*—There may be passages in reference to some of the principal topics which have been mentioned, but I have avoided entering upon any elaborate consideration of each particular vessel. There is no distinct enumeration of the vessels.

*Mr. Evarts.*—There is, so distinct as this; it is expressly stated that under the law neither the Georgia nor the Shenandoah, nor the subsidiary vessels that carried their armaments to the Georgia and Shenandoah, and to the Florida and Alabama, had, in so doing, committed a breach of neutrality.

I am arguing now under the second Rule. I have not felt that I was transcending the proper limits of this debate, because, in answer to the special Argument of the eminent Counsel, I have argued in this way. My own view as to the extension of the Argument of the learned Counsel in his discussion of what is called "due diligence," as a doctrine of the law of nations, would not have inclined me to expect so large a field of discussion as he covered. But, as I have admitted in my introductory remarks, the question of due diligence connects itself with the measure of duty and the manner in which it was performed, and I felt no difficulty in thinking that the line could not be very distinctly drawn.

I have undertaken to argue this question under a state of facts, which shows that a whole naval project is supplied, from the first outfit of the cruizer to the final end of the cruize, by means of this sort of connection with neutral ports and waters as a base of naval operations; and I have insisted that such naval operations are not excluded from the proscription of the second Rule, by what is claimed in the Argument of the learned Counsel, as the doctrine of contraband of war and the doctrine of asylum.

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At the Conference of the Tribunal, held on the 6th day of August, Mr. Evarts continued as follows:—

I was upon the point of the doctrine of the British Government, and its action under that doctrine, as bearing upon the outfit of the contributory provisions of armament, munitions, and men, set forth in such vessels as the Bahama, the Alar, and the Laurel. The correspondence is full of evidence that I was correct in my statement of the doctrine of the British Government, and of its action from beginning to end being controlled by that doctrine; and all the remonstrances of the United States were met by the answer that the law of nations, the Foreign Enlistment Act, the duty of neutrality, had nothing whatever to do with that subject, as it was simply dealing in contraband of war. The importance of this view, of course, and its immense influence in producing the present controversy between the two nations, are obvious. The whole mischief was wrought by the co-operating force of the two legal propositions: (1) That the *unarmed* cruizer was not itself a weapon of war, an instrument of war, and, therefore, was not to be intercepted as committing a violation of the law of nations; and (2) That the contributory provision by means of her supply ships, of her armament, munitions, and men, to make her a complete instrument of naval hostilities, was also not a violation of the law of nations, but simply a commercial dealing in contraband. It was only under those combined doctrines that the cruizer ever came to be in the position of an instrument of offensive and defensive war, and to be able to assume the "commission" prepared for her, and which was *thenceforth* to protect her from interference on the doctrine of comity to sovereignty.

So, too, it will be found, when we come to consider the observations of the eminent Counsel on the subject of due diligence, to which I shall have occasion soon to reply, that the question whether these were *hostile acts*, under the law of nations, was the turning point in the doctrine of the Government of Great Britain, and of its action, as to whether