what were they? Why, primarily, it was this very question of the various forms of contributory aid from the neutral ports and waters of Great Britain, by which the Confederate navy had been made, by which it was armed, by which it was supplied, by which it was kept on foot, by which, without any base within the belligerent territory, it maintained a maritime war.

Anterior to the negotiation which produced the Treaty, there is this public declaration made by Mr. Gladstone, and cited on page 215 of the Case of the United States:—"There is no doubt that Jefferson Davis and other leaders of the South have made an army; *they are making*; it appears, *a navy*."

There is the speech of Lord Russell, on the 26th of April, 1864, also cited on the same page:—"It has been usual for a Power carrying on war upon the seas, to possess ports of its own, in which vessels are built, equipped, and fitted, and from which they issue, to which they bring their prizes, and in which those prizes, when brought before a Court, are either condemned or restored. But it so happens that, in this conflict, the Confederate States have no ports except those of the Mersey and of the Clyde, from which they fit out ships to cruize against the Federals; and having no ports to which to bring their prizes, they are obliged to burn them on the high seas." There is, furthermore, the declaration of Mr. Fish, made as Secretary of State, in his celebrated despatch of the 25th of September, 1869, in which he distinctly proposes to the British Government, in regard to the claim of the United States in this controversy, that the rebel counsels have made Great Britain "the arsenal, the navy yard, and the treasury of the insurgent Confederates."

That was the controversy between the two countries, for the solution of which the Rules of this Treaty, and the deliberations of this Tribunal were to be called into action; and they are intended to cover, and do cover, *all the forms* in which this use of Great Britain, for the means and the opportunities of keeping on foot these maritime hostilities, was practised. The first Rule covers all questions of the outfit of the cruizers themselves; the second Rule covers all the means by which the neutral ports and waters of Great Britain were used as bases for the rebel maritime operations of these cruizers, and for the provision, the renewal or the augmentation of their force of armament, munitions, and men. Both nations so agreed. The eminent Counsel for the British Government, in the special argument to which I am now replying, also agrees that the *second* Rule, under which the present discussion arises, is conformed to the pre-existing law of nations.

We find, however, in this chapter of the special Argument, another introduction of the *retroactive effect*, as it is called, of these Rules, as a reason why their interpretation should be different from what might otherwise be insisted upon. This is but a re-appearance of what I have already exposed as a vice in the Argument, viz., that these Rules, in respect to the very subject for which they were framed, do not mean the same thing as they are to mean hereafter, when new situations arise for their application. Special methods of criticism, artificial limits of application are resorted to, to disparage or distort them, as binding and authoritative rules, in regard to the past conduct of Great Britain. Why, you might as well tear the Treaty in pieces as to introduce and insist upon any proposition, whether of interpretation or of application, which results in the demand that the very controversy for which they were framed is not really to be governed by the Rules of the Treaty.

The concluding observations of this chapter, that the invitation to other Powers to adopt these Rules as binding upon them, contained in the Treaty, should discourage a forced and exaggerated construction of them, I assent to; not so much upon the motive suggested, as upon the principle that a forced and exaggerated construction should not be resorted to, upon either side, upon any motive whatever.

I now come to the more general chapter in the Argument of the learned Counsel, the *first* chapter, which presents, under forty-three sections, a very extensive and very comprehensive—and certainly a very able—criticism upon the main Argument of the United States upon "due diligence," and upon the duties in regard to which due diligence was required, and in regard to the means for the performance of those duties and the application of this due diligence possessed by Great Britain. Certainly these form a very material portion of the Argument of the United States, and that Argument, as I have said, has been subjected to a very extensive criticism. Referring the Tribunal to our Argument itself, as furnishing at least what we suppose to be a clear and intelligible view of our propositions of the grounds upon which they rest, of the reasoning which supports them, of the authorities which sustain them, of their applicability and of the result which they lead to—the inculpation of Great Britain in the matters now under judgment—we shall yet think it right to pass under review a few of the general topics which are considered in this discussion of "due diligence."