THE DANISH-GERMAN NON-AGGRESSION PACT

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Among the numerous political pacts of recent years two types have attracted special attention, viz: assistance pacts and non-aggression pacts.

There are essential differences between these two categories of pacts. The assistance pact, for instance, implies an obligation under certain conditions to take certain action; the non-aggression pact, on the other hand, involves an obligation to refrain from taking certain action; the assistance pact becomes operative only when it is judged that the conditions under which it is to take effect have come into existence (i.e. usually when an unprovoked act of aggression has taken place), whereas the non-aggression pact requires no such judgment to be passed on the action of a third state.

The active and positive nature of an assistance pact excludes the possibility of a contracting party remaining neutral when a casus foederis has been ascertained — the party bound to come to the assistance of another being in fact specifically obliged to give up that policy of non-intervention which is the essence of neutrality — but the non-aggression pact, which merely binds the parties to remain passive, is not only compatible with neutrality but even accentuates the principle of neutrality. Non-aggression pacts and neutrality pacts are sometimes looked upon as synonymous, but this classification is too general. A neutrality pact is a narrower conception than a non-aggression pact. The Spanish-Italian treaty of 1926, for instance, only bound either party to remain neutral if the other contracting party were involved in a war, but not — as a non-aggression treaty — to desist in any circumstances from attacking or using force against the other. A pact of the latter kind goes beyond what is described by the term »neutrality-pact«, but the term »non-aggression and neutrality pact« would be correct, provided it binds the parties not only to refrain from acts of aggression but to observe neutrality.

The Danish-German non-aggression pact of the 31 May 1939 may presumably be regarded as a combined non-aggression and
neutrality pact, in which the non-aggression provisions are contained in article 1, section 1, and the neutrality provisions in article 1, section 2 in conjunction with the protocol annexed to the pact.

Art. 1, sect. 1 provides that the parties — Denmark and Germany — will in no case resort to war or any other use of force against each other. This provision might appear superfluous as both Denmark and Germany are signatories to the Kellogg pact of the 27 August 1928 by which the contracting parties mutually abandon war as a means of national policy and, moreover, declare that they intend to solve all differences and disputes that might arise between them by peaceful means only. The Kellogg pact, however, is not only open to interpretation on a number of points, but it does not apply to all cases of war, perhaps not even to all wars of aggression. The obligation under the Danish-German non-aggression pact, on the other hand, is absolute and admits of no exception; for this reason alone it cannot be regarded as a mere reiteration of the Kellogg pact, but it would be more correct to say that in the relation between Denmark and Germany the provisions of the Kellogg pact are superseded by the non-aggression pact. Owing to its absolute rejection of war as an instrument of policy in the relation between the two countries — cf. the words «in no case» — the Danish-German non-aggression pact might be characterised as a «no-more-war declaration» as between the two states, only limited by the term of years of the pact. There are in the world to-day certain applications of force which are not covered by the traditional, formal definition of war, but which either in respect of their course or in respect of their results, or in both respects, are comparable with war, such as for instance the present conflict between Japan and China. Also this application of force is renounced in categorical form by the terms of the Danish-German non-aggression pact. This excludes, of course, in the first place any kind of military occupation, including the so-called occupatio pacifica, without the consent of the other party or military reprisals, however justified they might be, but in the second place also demonstrations of physical power as a means of coercion, such as naval demonstrations, concentrations of troops on the frontiers or indeed any threat to use force as a means of psychological pressure, for example in a so-called «war of nerves». Just as the term «use of force» in all cases involving the exercise of physical power must be given a wide meaning, including not only direct compulsion but also any «bang-ing of tables» og «display of muscle» so it must, on the other hand, be understood as strictly limited to physical power; hence