



CHANGED BORDERS, CHANGED NATIONALITIES

The Option of Nationality

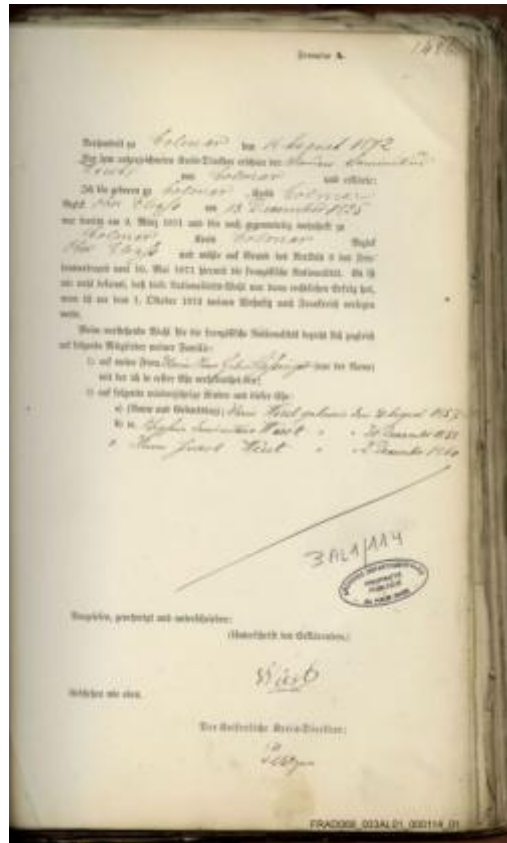
Benoît VAILLOT

ABSTRACT

Since the early nineteenth century, populations in Europe have changed nationality when borders changed. They nevertheless had the option of preserving their nationality on the condition, most of the time, that they leave the territory that had just changed sovereignty. The German Empire's annexation of Alsace-Lorraine in 1871 offers an example of a particularly interesting option.



Louis-Frédéric Schutzenberger, *The Exodus*, 1872, oil on canvas. [Musée des Beaux-Arts, Mulhouse.](#)



Dominique Wiest's declaration for the option of French nationality, Colmar, August 16, 1872. Archives départementales du Haut-Rhin, 3 AL 1/114.

When a territory is ceded, its nationals—those who have its nationality—are also generally ceded. In Europe, since the early nineteenth century the treaties consecrating border changes often included a convention-based nationality option clause. This provision allows nationals from the ceded territories to preserve their nationality, most often on the express condition of emigration. The inhabitants of Alsace-Lorraine thus became Germans as a result of the 1871 annexation, although the option clause included in the Treaty of Frankfurt allowed them to preserve their French nationality if they left Alsace-Lorraine. The concrete application of the option gave rise to many complications with regard to nationality.

The Origins of the Nationality Option

In early modern Europe, the subjecthood of inhabitants changed during a territorial conquest; however, beginning in the seventeenth century there emerged a right of emigration after a cession. For example, the Alsatians who became the subjects of the French king through the Treaty of Ryswick in 1697 were authorized to leave the kingdom with their property, otherwise they would owe loyalty to their new sovereign. The option was mentioned for the first time in the Elissonde Boundary Treaty, which established the French-Spanish border in the Aldudes valley in 1785.

The border treaty between Austria and Russia on May 3, 1815, which was added to the final act of the Congress of Vienna, would serve as a framework for the option throughout the modern period. It granted the populations residing in or originally from the territory ceded to

Austria the right to preserve their quality as subjects of the Russian sovereign, “by means of a declaration and an emigration” completed within an established timeframe. If one of the two conditions was not met, the quality of being a subject of the Austrian sovereign was acquired, with no future possibility of recovering one’s subjecthood of origin. The option concerned both Russian nationals residing in the territory who would come under Austrian sovereignty, as well as those who were born there, although the nationality of foreigners was not at all affected.

International treaties and jurisprudence reveal three kinds of options: the *positive option*, which grants optants the nationality of the state where they were born; the *negative option*, which enjoins optants with two nationalities (one obtained through *jus sanguinis* and another by *jus soli*) to repudiate their nationality via *jus soli*; and the *confirmative option*, which is the most common, in which the optant confirms their nationality, generally by leaving the territory that has come under another sovereignty.

To Each Border Change Its Option

When a new state is created, the question of the extent of its nationals naturally arises. The nationality option is a tool that addresses this situation. For instance, in 1839 the Treaty of the XXIV Articles (Treaty of London) used provisions from the Congress of Vienna to provide Belgium, which had just won its independence from the Netherlands, with nationals. Any Dutch national born on Belgian territory acquired the nationality of the new state, unless they declared the option for Dutch nationality and left the country. The same principle was applied in 1992 to create Slovak nationality during the dissolution of Czechoslovakia.

When a border changes, an option often accompanies the treaty sanctioning the change. When Piedmont-Sardinia ceded Savoie and Nice to France in 1860, or when Denmark ceded Schleswig to Prussia in 1864, the populations born or residing there had the ability to opt for their nationality of origin, on the condition of making the declaration and emigrating within a period of one and six years, respectively. Some options were more liberal, and were accompanied by an effort to consult with the populations involved. During the incorporation of Menton and Roquebrune into France in 1861, the inhabitants were not only consulted through a referendum, but could also opt for Monegascan nationality without having to leave their city.

After the First World War, the various peace treaties included option clauses for establishing the nationality of the inhabitants of newly independent states, and for determining that of populations from territories changing sovereignty. The complexity of their implementation led to many problems with regard to nationality and caused diplomatic tensions, which could explain why the option was rarely used in the aftermath of the Second World War.

The Alsace-Lorraine Option (1871-1873)

Until 1914, optants were not very numerous. The choice was primarily made by civil servants and members of the military. The option in the Treaty of Frankfurt (1871) is an exception in this respect, as it directly led to the departure of over 130,000 people from Alsace-Lorraine, territories ceded by France to Germany following the Franco-Prussian War.

The 1.6 million French nationals born and residing in Alsace-Lorraine could preserve their French nationality, on the condition of declaring an option and “transporting their residence”

to France before October 1, 1872; they had a confirmatory option at their disposal. Those residing outside of Alsace-Lorraine at the time of the annexation, who numbered approximately 250,000, could opt to conserve their French nationality or acquire German nationality, and had until October 1, 1873 if they were residing outside of Europe; they had both a positive and confirmatory option. The option declaration had to be made before the *Kreisdirektor* for the place of residence in Alsace-Lorraine, before the mayor in France, and before the diplomatic chancellery in other cases. However, in reality declarations were not as compartmentalized as the governments would have liked.

Differences in application in France and Germany led to numerous problems with respect to nationality, especially for women and minors who submitted an option declaration. Between 1871 and 1914, this matter undermined diplomatic relations between the two countries. People from Alsace-Lorraine opted in unprecedented proportions: nearly 508,000 people declared an option for French nationality between 1871 and 1873. Only 130,000 left the ceded territories. Those living outside of Alsace-Lorraine opted massively for French nationality. Nearly 3,000 of them opted for German nationality, primarily prisoners and soldiers, who were *ipso facto* freed from military service. Most optants settled on the border or in the Paris area, and approximately 5,000 in Algeria. All social categories were involved, although urban elites were overrepresented. Nearly one third of emigrants were between the ages of 17 and 21, and were avoiding the universal military service in effect in Germany, a major motive for leaving that reappears in many options.

As we have seen, the nationality option offers inhabitants of a territory changing sovereignty the ability to conserve their nationality on the condition of leaving that territory. This right is also a tool enabling states to get rid of those individuals most hostile to their sovereignty by not granting them the status of a national.

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