

**THE ORIGINS OF “BURDEN
SHARING” IN THE CONTEMPORARY
REFUGEE PROTECTION REGIME**

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1951 Refugee Convention

Preamble - Recital 4

Considering that the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international cooperation

I. The architecture of the 1951 Convention

- General definition of a “refugee” based on well-founded fear of persecution
- Agreement between States as to how they would treat refugees
- Not covered: admission, “right” to asylum, apportioning responsibility

II. Travaux préparatoires

Original French proposal

But considering that the exercise of the **right** of asylum places an undue burden on certain countries **because of their geographical situation**, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot be achieved without international cooperation **to help to distribute refugees throughout the world.**

II. Travaux préparatoires

***Questions of form: appropriateness of recital 4
for the preamble?***

- Burden sharing provision unrelated to purpose and operational part of the 1951 Convention

II. Travaux préparatoires

***Questions of substance: the scope and purpose
of the burden sharing provision***

- Force majeure for receiving States
- No positive obligation on other States to assist

III. The “double compromise” - contemporary implications?

1. What actions constitute “international cooperation”?
2. Terminology
3. The legal value of the preamble
4. The ability of States to condition compliance with non-refoulement obligations on the receipt of international assistance

IV. Conclusion

- Structural tension in the refugee regime
- Burden sharing provision not designed to distribute burdens and responsibilities *equally* between States
- Travaux are just the first step in understanding legal and normative relevance of burden sharing in contemporary refugee regime