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Cuba made the first draft in the making of the Universal Declaration of Human Rights

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Abstract

With this research I have answered the twofold question of how Cuba played a part in the making of the Universal Declaration of Human Rights, and what differences and similarities that can be found between the Cuban draft of Human Rights versus the final product of the Universal Declaration of Human Rights. Since there is no previous research in this field I have chosen to look at some of the most renowned historians in the area of the Universal Declaration of Human Rights as well as the history of Cuba to find some context for my research. By systematically going through and picking out the most relevant meeting documents of the UN, I found that Cuba was first when it came to making a suggestion for human rights to be a part of the first session of the first part of the General Assembly, they were also first to make a draft of Human Rights. I have then made a content analysis to analyze the differences and similarities of the Cuban draft and the declaration. Using Martha Nussbaum's list of ten capabilities to structure the rights of the documents, I have found that there are more similarities than differences between the two. The conclusion is that I believe that Cuba played a big part in the making of the declaration, but they did not get any acknowledgement in the history of the declaration.

Keywords:

The Universal Declaration of Human Rights, UDHR, Cuban draft on Human Rights, The Economic and Social Council, The Nuclear Commission on Human Rights, History, Cuba, Ernesto Dihigo, Martha Nussbaum, Eleanor Roosevelt

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1 Introduction

The Universal Declaration of Human Rights (the UDHR) was written in the five official UN languages and has out of these have been translated in 380 different versions that have all been collected in their official publishing of documents.¹ It is most likely one of our most important documents of human rights since the world wars. And it was the first time in all of history that such a vast community of States decided upon a declaration that would be the same for all. Not made by a single author, but perhaps thousands.² The world has not seen anything quite like it.

The authors have been praised, and even awarded for their work. However, I have with my research been able to look into the meetings documents of how the UDHR came to be, and in doing so I have discovered that Cuba was first to suggest human rights on the agenda of the General Assembly, as well as making a draft on Human Rights.

Mark Mazower, is a researcher in regards to the foundation of the Universal Declaration of Human Rights and how it came to be. In his article “The strange triumph of Human Rights, 1933-1950” (2004) he refers to how Germany's foreign minister, Gustav Stresemann, was supporting minority rights and lobbied for this as one of the main causes of the League of Nations in 1929. Only a few years later both the League and Stresemann no longer had the influence they once had, and Hitler began to shape a completely different foreign policy.³

¹ Pillay Navanetham, “Foreword by Navanetham Pillay” in *The Universal Declaration of Human Rights: the travaux préparatoires*, Schabas, William A. (red.), Cambridge Univ. Press, Cambridge, 2013, pg. xliii

² Lauren Paul Gordon, *The evolution of international human rights: visions seen*, 3rd ed., University of Pennsylvania Press, Philadelphia, Pa., 2011, pg. 225-226

³ Mark Mazower, *The strange triumph of human rights, 1933-1950*, The Historical Journal, Vol. 47, No. 2, June 2004, pg. 383-384

I would like to use this as a metaphor to paint a picture of the political landscape Cuba was in when they made the draft of Human Rights to the UN in 1946. Cuba went through a change 1940-1948 where they moved towards democracy and advocated human rights nationally, this is the context in which they made a draft on Human Rights to the United Nations 1946.

1.1 Problem, purpose and research questions

I have chosen to research the foundations of the Universal Declaration of Human Rights (UDHR A/811). I have specifically chosen to research how Cuba played a part in the making of UDHR by analysing the meeting documents and protocols of the United Nations (UN). My hope is that I through this research can understand the foundations of the making of one our most esteemed and well known human rights documents since World War II (WWII) and research what part Cuba had to play, as it turns out they were the first and only member who wanted to include an international bill of rights on the First Part of the First Session of the General Assembly. I will research the meeting documents and protocols published by the United Nations, to investigate what role Cuba played in the making of the UDHR. I will then make a content analysis of the Cuban draft of human rights and compare it with the UDHR to analyse differences and similarities between the two. To do so I will use Martha Nussbaum's ten categories for capabilities and place the 22 Cuban and 30 UDHR rights into these categories to compare them.

The research questions are the following:

How did Cuba play a part in the making of UDHR?

What differences and similarities are to be found between the Cuban draft of human rights versus the final product of UDHR?

1.2 Material and demarcation

I have chosen to give this part of my research some space to further explain how I have chosen my material in order to further explain why I have excluded some material. This is a big area of research, however my study will be quite unique in its focus of both the foundations of how UDHR came to be, and through that zoom in to the role Cuba has played, and from there compare their draft of human rights with UDHR. This is historical research, rather than philosophical or theological.

I started this essay with a completely different question than I ended up researching. In the very beginning of brainstorming what I would like to explore further within this vast topic of human rights, I found interest in how States fail to implement covenants and declarations they have agreed and sometimes even legalised to be followed. But rather quickly I realised that the answer would be quite given to this question, the covenants and declarations can simply never surpass and always have to be balanced with the States own sovereignty. I decided to instead of researching in what way the covenants and declarations are not fulfilled, to instead research one of our greatest human rights documents since the World Wars, the UDHR. My plan was to research the motives and how UDHR came to be. All with a perspective of finding a greater understanding of this declaration that so many put their trust in when it comes to human rights.

First of all, with the guidance from good counsel by teachers and classmates I realized that finding out the motives behind why and how something is written is an almost impossible task to take on. Perhaps even more so with a declaration that has multiple writers, is written in multiple languages and a generation that has passed, 80 years ago. But I was still curious as to how this document came to be. I had to find out if there were any meeting agendas available, with the protocols of what had been spoken in the meetings that led up to UDHR 10 December 1948 in Paris.

The United Nations provide many documents and meeting agendas that are public, but it was a challenge to find the right documents specifically about UDHR in the massive archive of meeting agendas and protokolls. So I decided to visit the Raoul Wallenberg Institute in Lund at their reference library, where I happened to see the work of William Schabas on one of the shelves. Schabas is a Professor of International Law at Middlesex University, London.⁴ He has put together a collection of the documents that led to UDHR. It is a vast collection of 3376 pages and a weight of 6,5 kg.

The beginning specifically caught my interest, and whilst not perhaps the best of strategies, I decided to start reading it from the beginning to get a glimpse of how the whole process started. I found that in the first couple of months, and the first 45 pages of Schabas big collection, one member state stood out before the others when it came to standing up for human rights and wanting to make an “International bill of rights” as it first was called, Cuba. That is why I have chosen to research these meeting documents as my main material. I have chosen to demarcate my research for the time period of 1941-1948, since this is the main time that UDHR is discussed and shaped as we know it. The analysis of how Cuba played a part in the making of the UDHR is however a time span of only one year - June 1945 when the UN Charter was signed in San Francisco until May 1946 when the Nuclear Commission on Human Rights had fully commenced their work in developing an international bill of rights.

⁴ Schabas William A, 2013, pg. 1

1.2.1 Primary and secondary sources

Primary sources

Cuba was the first member who wanted to include human rights in the First Part of the First Session of the work of the General Assembly, the meeting agendas from the 5th of January 1946 to the 8th of May 1946 is my main material of research.

These are the documents that give the clearest insight as to what role Cuba had in the making of UDHR. There are more than 700 documents that led up to the making of UDHR, and the work began 1945.⁵ These meeting agendas are notes and protocols from some of the earliest meetings that led to the making of UDHR. The reason why I choose Cuba, and not for example Panama who also had a say in terms of what they wanted the UDHR to entail, is because Cuba was the first to make a stand for human rights to be on the agenda of the General Assembly. My research will further clarify this. The timeline and the documents published from the meetings are self explanatory in my opinion as we can look at the day when who made a claim for what to see clearly that Cuba were indeed the first, as well as the only member to suggest human rights to be a part of the Agenda of the First Part of the First Session of the General Assembly of the United Nations.

I have chosen to research six documents.

1 The *first* document is a record of Cuba suggesting a supplement to include the declaration of the rights of man, and the rights and duties of nations to the Agenda of the First Part of the First Session of the General Assembly. They were the only ones to do so.⁶

2 The *second* is the protocol of what was spoken in the room that led to the vote against the Cuban suggestion from the first document.⁷

⁵ Schabas William A, 2013, pg. xxxvii

⁶ A/3 5 January 1946, (A/BUR/1 of 11 January 1946 is a similar document) “*Supplementary List of Items for Inclusion in the Agenda of the First Part of the First Session of the General Assembly*”

⁷ A/PV.7, 14 January 1946, “*Seventh meeting (of the General Assembly)*”

3 The *third* is the decision from a vote by the General Assembly of the Cuban suggestion, a majority voted against it.⁸

4 The *fourth* is a draft sent from the delegation of Cuba to the President of the Economic and Social Council with a draft of a “Declaration on Human Rights”, with the intent that it would be used as a working document.⁹

5 The *fifth* is a request made by the “Nuclear” Commission on Human Rights” to make as wide a collection as possible of the worlds different draftings on human rights.¹⁰

6 The *sixth* is that the chairman of the Nuclear Commission on Human Rights no longer found it valuable to spread the Cuban “Declaration on Human Rights”.¹¹

To choose these documents I have searched the archive of official meeting agendas and documents through the UN. I started off by searching for “Universal Declaration of Human Rights”, but did not find what I was looking for. I then realized that I need to adjust my search since the documents would not exist in that shape or form until much later in the process of their making. The reason why I have chosen these documents is because they are the first documents in the making of UDHR as we know it. With my choice of main and secondary sources as well as my analysis as discussed below, I have been able to find a unique angle of an already massive research field.

I will also compare and analyse the content of the UDHR with the draft of Cuba's “Declaration on Human Rights”. Therefore the UDHR is also a part of my main material.

⁸ A/BUR/6, 14 January 1946, General Committee, “*Report to the General Assembly on the Supplementary List of Items to be Included on the Agenda of the First Part of the First Session*”

⁹ E/HR/1, 12 February 1946, London, Original text: Spanish, “*Draft declaration on human rights and letter of transmittal*”, Cuban Legation, Great Britain, The Cuban Delegation to the General Assembly of the United Nations “Draft declaration on Human Rights” (document was issued 22 April 1946)

¹⁰ E/HR/8, 30 April, 1946, *Summary Record of Meetings of the “Nuclear” Commission on Human Rights*, Second meeting held on Tuesday, 30 April 1946 at 10:30 a.m., also in Schabas Williams A, 2013, pg. 39

¹¹ E/HR/15, 8 May 1946, “*Summary Record of Meeting of the Nuclear Commission on Human Rights*”

The source I have used to find a relevant main material is “Universal Declaration of Human Rights, The Travaux Preparatoires, William A Schabas, 2013”. The meeting agendas are available through the UN’s official documents and the Raoul Wallenberg Library in Lund.

Secondary sources

I have chosen to look at previous research made out of a critical perspective and by asking questions to find out a different perspective in the making of UDHR. A common picture painted of the UDHR is that it was solely made out of philanthropic reasons, that there were some clear stand out heroes in the making that kept fighting for the rights and then it came to be in full unity since this was something that mattered a lot for the members of the UN. To a certain degree, this was a view I also shared before commencing a study of the topic of human rights. Even if there might be some truth to that picture, I have found in my research from those with knowledge about this that it is just not that simple.

I have not found any previous research (either books or articles) that focuses specifically on Cubas part in the making of UDHR. My research concludes that they were indeed the first ones to suggest an international bill of rights, human rights, to be a part of the agenda of the General Assembly, and criticized that it should be done by a committee. For this reason I will not have any secondarily material with a specific focus on Cuba. Instead I have chosen to get a broader understanding of different perspectives in how UDHR came to be. To get more knowledge and understanding as to the context in which Cuba made their draft of human rights, and maybe even get a glimpse of understanding when it comes to why their suggestion of human rights was voted down in the General Assembly. A closer look on the list of secondary sources of research are to be found in the segment of “literature and previous research”.

1.2.2 Criticism of sources

There is a threat in my research that I have chosen to look at Schabas collected documents that led to UDHR, instead of making my own searches in the UN archives of documents. I did this because there was such a big plethora of meetings documents and protocols available that it was a challenge to get an overview as to which documents were the most valid for my research. I am aware that this might have caused the research to potentially miss records that Schabas might have not seen as valuable in the making of UDHR, especially with my unique focus on Cuba. This is something to be aware of in future research. Now that I have a foundational knowledge of the key documents I found of the greatest value for my research, it is easier to build on to that in the future and find even more information in regards to how Cuba played a part in the making of the UDHR. However, the conclusion remains the same, since it is a fact based on these documents that Cuba was the first member of the UN to suggest a declaration of human rights to be a part of the First Part of the First Meeting of the General Assembly.

Since there is also a lot of research made in the area of the making of UDHR, there is a potential risk that I have not chosen the sources that are the most relevant to my research. It is possible that there is previous research made that would be more suiting for the study I have made. But I have taken that in regard and done my best to avoid it by using research that have been cited and referenced the most in similar works of others. But there is however a risk that I might have missed something of great significance in the history writing of how UDHR came to be. Another risk is that I do not speak any other language than Swedish and English, and some of the original documents have been translated from Spanish to English. If I would have had a knowledge of Spanish I might had been able to further extend my research in regards to the Cuban history writing of their participation in the UDHR.

1.2.3 Acknowledgement of other sources

Here is some background as to what I have chosen not to further investigate in my research, but which still relates to the topic of how the UDHR came to be. These are some of the other key human rights documents that led up to the UDHR that I have not chosen to further investigate:

- Magna carta 1215 (England, mainly heritage rights)
- “The Declaration of the Rights of Nations of 1917” (referred to by Dmytro Zakharovych Manuilsky in the UN document A/PV.7 leading up to the UDHR, but the real name of the document is actually “The Declaration of the Rights of the Peoples of Russia”)
- Declaration of the right of man 1789 (France, five months after the start of the french revolution)
- Bill of rights 1791 (the United States, main theme here is weapons and rights)

There is a foundation in how the UDHR came to be that can be found in the Magna Carta, and the Bill of rights. There is also a previous document by the name “Declaration of the International Rights of Man”, which is a part of a declaration from an exclusive group of law academics at Institut de Droit International 1929, between World War I (WWI) and WWII. President Franklin D. Roosevelt made a speech 1941 about the four foundational freedoms, which we can also find in the UDHR.¹²

Another document I have chosen to exclude is the Atlantic Charter from 1941, 12th of August. I found that this quote from the Atlantic Charter related to my research in the leading up to the UDHR: “after the final destruction of the Nazi tyranny, they hope to see established a peace which will afford to all nations the means of dwelling in safety within their own boundaries, and which will afford assurance that all the men in all the lands may live out their lives in freedom from fear and want”.¹³

¹² Schabas Willam A, 2013, pg. lxxii - lxxiv

¹³ “*The Atlantic Charter*”, 14 August, 1941, number 6.

However, I had to make a demarcation in order to stay true to the demarcation and the time span I have chosen for this research.

These are all important and in different ways significant human rights documents that I wanted to acknowledge and mention in this background but that I will no further research.

1.3 Research ethics and evaluations

I have chosen documents that are available and open for everyone to read through public libraries and books, as well as the UN's own collection of documents that are published. Quotes have been clearly referenced, as well as the thoughts and the work of the researchers present in my material.

2 Background and previous research

2.1 Introduction

In this segment I will focus mainly on the main actors that are mentioned in the history of the making of the UDHR, as well as its history and background. The reason is to get some context as to how the UDHR came to be according to some of the most highly esteemed researchers in the field. Since I have not been able to find any researcher that has made a similar research as me, in terms of the Cuban involvement in the process of the making of the UDHR, I have looked at the wider perspective to find out what previous research tells us how the UDHR came to be.

I have also chosen to further explain the historic context of Cuba in the time of when they made this draft of human rights, to better understand in what context they did so.

Here is my choice of secondary research to frame my research of how UDHR came to be, to lead to the question of how Cuba played a part.

- Johannes Morsink, *The Universal Declaration of Human Rights : origins, drafting, and intent*, 1999. This is a central piece within my area of research, and the book had been quoted 1356 times according to Google Scholar. I will mainly focus on the chapters regarding the making of UDHR, how it rose up out of WWII, and the difficulties of gathering all these states in agreement to a declaration.
- Paul Gordon Lauren, *Proclaiming a Vision: The Universal Declaration of Human Rights - The evolution of international human rights : visions seen*, 2011. I have chosen to focus on chapter seven, a critical history writing of how UDHR came to be. An example he raises is China who wanted to add respect of human rights based on ethnicity, but also this was voted down. This is a secret recording that can not be accessed, but it says something about the background of UDHR and the diplomacy that led to it.¹⁴
- Linde Lindkvist, *Religious Freedom and the Declaration of Human Rights*, Lindkvist is a PhD and senior lecturer in human rights studies at the University College Stockholm, one of his special areas is in regards to human rights history. This work mainly focuses on article 18 of the UDHR, but also gives some insights as to how the declaration in whole came to be.
- Mark Mazower, *The Strange Triumph of Human Rights, 1933-1950*. Mazower is a professor of History at Columbia University, one of his focus areas has been Europe in the 20th century, he has critically researched the making of the UN and the ideal picture so often painted. In this article he gives light to how this has affected human rights.

¹⁴ Lauren Paul Gordon, 2011, pg. 163

- Samuel Moyn, *The Last Utopia*, 2012. Moyn is a professor of law and history at Yale University. He means that just because UDHR existed from 1948 it does not have to mean that human rights actually existed and was protected as it was meant through the declaration. He is saying that human rights came to be not until 1968.
- Louis A. Perez, Jr. *Cuba between reform and revolution*, fourth edition, 2011. Perez is a professor of History and has specified in the study of Cuban history. I have chosen to focus on chapter ten, which is the relevant time period that I am researching.

2.1.1 Historic context of Cuba in the 1930-40s

During the early 1940's Cuba made several big scale trade deals with the United States, as they entered into WWII 1941, during the rule of Batista.¹⁵ Following the 1933 Cuban revolution, Ramón Grau San Martín became the president for 100 days, but then lost the power again to Batista. 1944 Grau got the power back again and won in five out of six provinces of Cuba.¹⁶ He was the head of the party Auténticos, who was in opposition to capitalism and communism. But at the same time as the 1940s was a time of the most honest and fairly conducted elections for almost 40 years¹⁷ it was also a boom in the sugar industry, that increased by almost 40%.¹⁸ The new government, under the lead of Grau, was infiltrated with corruption which was a direct result of the financial success according to historian Perez, with taxation from the revenues increasing from \$75.7 million 1937-38 to \$244 million in 1949-50.¹⁹ The revolution of the 1930s was centered around economic reforms, political freedom, social justice and public honesty. This was however lost during the rule of Grau 1944-48 according to some of the people in his party who broke with his party and started a new one, true to the spirit of the revolution.²⁰

¹⁵ Pérez Louis A, "*Cuba: between reform and revolution*", 4. ed, Oxford University Press, New York, 2010[2011], pg. 215

¹⁶ Pérez Louis A, 2010, pg. 216

¹⁷ Pérez Louis A, 2010, pg. 214

¹⁸ Pérez Louis A, 2010, pg. 217

¹⁹ Pérez Louis A, 2010, pg. 217

²⁰ Pérez Louis A, 2010, pg. 218

But regardless of who was the president, the 1940s also gave way to a new standard out of which the politicians were measured, the 1940 constitution, influenced by the Cuban revolution 1933. The document consisted of political and social rights in terms of universal suffrage, free elections, maximum hours and minimum wages, pension and workers compensation.²¹

In this context of revolution and wanting to fulfill human rights nationally through a constitution, they also made a claim about human rights on an international scale through the newly started organization; the United Nations.

2.1.2 UDHR - an effect of WWII

In terms of what context we can place the UDHR, as well as its history and background, the UDHR was made in the aftermath of WWII. According to Moyne in his book “The Last Utopia” it was more a declaration of wrath caused by the effects of the war rather than the start of something new.²² Lindkvist also emphasizes the significance regarding after war time in which the UDHR came to be. With the WWII and the holocaust fresh in people's minds, it simply could not happen again. He would agree with Moyne that the declaration was more of a response to what had happened previously rather than a general stance for human rights.²³ Lindkvist says that it is important to understand that even if world events are not brought up in the meeting agendas, they were very much present in the context of how the Universal Declaration came to be.²⁴ The United Nations Charter became the catalyst for the UDHR, the Charter making statements promising the world that such horror it had been through during the WWII - would never happen again. The wrestle of state sovereignty and human rights so began.²⁵

²¹ Pérez Louis A, 2010, pg. 214

²² Moyn Samuel, “*The last utopia: human rights in history*”, Belknap Press of Harvard University Press, Cambridge, MA, 2010, pg. 2

²³ Lindkvist Linde, “*Religious freedom and the Universal Declaration of Human Rights*”, Cambridge University Press, Cambridge, 2017, pg. 57-58

²⁴ Lindkvist Linde, 2017, pg. 16-17

²⁵ Lauren Paul Gordon, 2011, pg. 192

Morsink also agrees with the other authors that the declaration came to be as a result of the wars, mainly the WWII, and as a response to the world that this would not happen again.²⁶

2.1.3 UDHR - the main actors in the making

So how can we explain how a group of States came together to agree upon UDHR? According to Mazower there is usually two answers given to this question. One is what he calls the “Eleanor Roosevelt” version, that it was because of the advocacy of an exclusive elect of key activists who worked tirelessly to persuade the States to protect human rights. The second he calls the “Adolf Hitler” version, that the world was so shocked from the agony caused by the terror of this man's rule, that it simply had to act and do something to stop it. “Good triumphed through the acts of a selfless few or out of the depths of evil”.²⁷ Moyné would probably agree more with the last explanation. But none of these are satisfactory according to Mazower. For one Mrs Roosevelt was not a heroic advocate that just came to be, she was chosen by President Truman to be in that position. Rather, it was according to him a strange international response to a conflict without a seemingly good answer to repair what had been broken during the WWI and WWII, perhaps emphasizing the last one.²⁸ Lindkvist speaks of different actors that was leading in the process of the making of the UDHR. He refers to the UN Commission of Human Rights, the Economic and Social Council (ECOSOC) and the eight member committee 1946-1948, as well as to Eleanor Roosevelt and René Cassin for commissioning the UDHR to all that she came to be. He is also referring to the meeting records of the UN, and how Schabas has made the most comprehensive and accessible collection of official sources.²⁹ The history and the origins in the making of the UDHR and human rights in general, matter, according to Mazower and explains that historians tend to see this in a different way by simply daring to see it for what it is.³⁰

²⁶ Morsink Johannes, *“The Universal Declaration of Human Rights: origins, drafting, and intent”*, University of Pennsylvania Press, Philadelphia, Pa, 1999, pg. 37

²⁷ Mazower Mark, 2004, pg. 380

²⁸ Mazower Mark, 2004, pg. 381

²⁹ Lindkvist Linde, 2017, pg. 16

³⁰ Mazower Mark, 2004, pg. 397

Lauren writes the history of the UDHR in a perspective of the UN taking action, he draws on the events happening only the year after the Charter and mentions Cuba and Panamas as to having “seized the initiative”³¹ to submit statements for the rights and duties of man and nations as a foundation to his point of view. But that it in fact was the UN which had “changed dramatically”³² and was now willing to put human rights into real actions. I have chosen to direct my research toward how Cuba played a part in the making of the UDHR, since I quickly discovered by reading through the meeting documents of its making - that they were both the first to suggest it on the agenda, as well as making a suggestion of a draft to spark the conversation. I would argue that it was not to seize the opportunity, but rather to advocate for human rights and their development into the international bill of rights that they sent they wanted it to be a part of the agenda as well as sending a draft of a declaration to the President of the Economic and Social Council.

Lauren specifically enhances the influence of Eleanor Roosevelt as one of the biggest catalysts and strongholds uniting the differing point of views in the making of the UDHR. Morsink would agree that the Roosevelts indeed were some of the greatest impactors, and specifically mentions the four freedoms; the freedom of speech and expression, freedom of worship, and the freedom from fear and want which were communicated by the President of the United States and also included in the preamble of the UDHR.³³ They can helpfully be summed up as the generations of human rights, according to Schabas, political liberties in the first generation, economic and social entitlements in the second and the importance of peace in the third.³⁴ Another inspiration mentioned to the declaration by Morsink is the International Bill of Rights, made by the US 1943.³⁵ The Economic and Social Council, and their Human Rights Commission which made the UDHR, was the only commission of the entire UN and the international bill of rights had to be made as a result to the Charter upon which the whole organization rested.³⁶

³¹ Lauren Paul Gordon, 2011, pg. 205

³² Ibid

³³ Morsink Johannes, 1999, pg. 1

³⁴ Schabas William A, 2013, “introductory essay”, pg. lxxiv

³⁵ Morsink Johannes, 1999, pg. 1

³⁶ Morsink Johannes, 1999, pg. 3

There are seven references relevant made to human rights in the Charter of the UN, which pushed them into action. Panama, South Africa and Cuba are being mentioned by Schabas as proposals to insert human rights to the draft Charter.³⁷

Schabas refers to the Cuban suggestion and how it was voted down by the General Assembly, and how they made a suggestion that declarations of international duties and man should be on the agenda of their first session. And also how they then sent a draft to them. He also makes it clear that the General Assembly did not again play a part in the making of the UDHR until the very last stage, including the early drafts (not referring to the Cuban draft, but generally).

“The commission on Human Rights was subordinate to the Economic and Social Council, not the Assembly. Henceforth, the General Assembly did not play a significant role in the drafting of the Universal Declaration until the final phase, in September 1948. Then, over nearly three months of intense activity, it thoroughly reworked the earlier drafts and crafted the final version.”³⁸

The people mentioned to play a very significant role in the making of the UDHR is Rene Cassin and Eleanor Roosevelt.³⁹

2.1.4 UDHR - the finished product

Rather than liberated states and colonies, human rights was now made to be the individuals against the state, which was put into action according to Moyné first in the 70's, when it became a part of international law.⁴⁰ This is because a lack of compromise from the States in terms of their empires and their sovereignty when the UN was founded in the 40's.⁴¹

³⁷ Schabas William A, 2013, ” introductory essay”, pg. lxxvi-lxxvii

³⁸ Schabas William A, 2013, “introductory essay”, pg. lxxviii

³⁹ Schabas William A, 2013, “introductory essay”, pg. lxxix

⁴⁰ Moyn Samuel, 2010, pg. 4

⁴¹ Moyn Samuel, 2010, pg. 7-8

This is a problem in the making of UDHR, according to Lauren that goes on to say that the declaration speaks against itself to some extent, international human rights in article 1 and State sovereignty in article 2.⁴² One of the major issues from 1919, the writing of the UN Charter and all the way leading up to the UDHR the issue of whether or not to include minorities was always an issue, in the end they were not included in the declaration but left out for a committee to deal with.⁴³ A big and historic agreement between a vast number of States across the earth, the only challenge being its implementation.⁴⁴ The language in the UDHR can according to Schabas, mainly be picked up in the Magna Carta of 1215, in the way it proclaims all men as free and how not even the monarch should be free from keeping the law.⁴⁵

According to me and the research I have made I would say that it was a decision that was made in direct relation to the war, predestined before the Commission of Human Rights came to be, and advocated to be a part of the General Assembly's agenda only by Cuba.

3 Method and theory

3.1 Method

The method I have used to answer the question as to how Cuba played a part in the making of the UDHR has been to systematically go through the meeting agendas and official documents of the UN that led up to the UDHR. By doing so I noted that Cuba was first when it came to wanting human rights on the agenda of the General Assembly, a simple conclusion given the fact that all the members were given the same opportunity to add to the agenda.

⁴² Schabas William A, 2013, pg. lxxvii

⁴³ Mazower Mark, 2004, pg. 388-390

⁴⁴ Lauren Paul Gordon, 2011, pg. 226

⁴⁵ Schabas William A, 2013, "introductory essay", pg. lxxii

Only Cuba brought up human rights. They were also the first ones to make a suggestion that led to UDHR, another simple conclusion which is a fact given the timeline following UN's official documents.

As this research moved from looking at the background of how UDHR came to be by looking at the meeting agendas and protocols from what was spoken in the room, as well as previous research, the dates and the votes spoke a very clear message in the silence of the lines to be found in between them; Cuba was the one and only member who wanted a declaration of human rights to be brought up on the agenda of the First Part of the First Session of the General Assembly.

At the very first meeting of the United Nations, the members were able to send in a "Supplementary List of Items for Inclusion in the Agenda of the First Part of the First Session of the General Assembly", and Cuba was the only member who made a claim for human rights. This made them the first member to do so. It is all collected in the official meeting agendas of the UN. It was the first opportunity members had to make a claim about what should be on the agenda for the First Part of the First Session of the General Assembly.

The method I have used has been to systematically go through the meeting agendas from the beginning of the making of UDHR, through the work of Schabas and his collection of gathered protocols leading up to the final declaration. I have then researched what works that would be the most relevant in terms of finding out the origins of the UDHR according to others in this field, in the historical sense. Mainly by finding out how many times their work has been cited, and referenced in well renowned authors and researchers within the same field. In order to then analyze Cuba's impact on the end result of the UDHR and compare how similar and different the UDHR and the Cuban draft of human rights is I have chosen to do a qualitative content analysis. Applying Nussbaum's ten categories of capabilities I have made the qualitative content analysis to compare Cuba's suggestion of rights with UDHR by making a categorization matrix through a scheme presented as appendices.

The qualitative content analysis is a tool to answer my second research question; what differences and similarities are to be found between the Cuban draft of human rights versus the final product of UDHR? To do this I will use the structures set up by Satu Elo and Helvi Kyngäs to make a successful qualitative content analysis from which I have then analyzed the data and made my conclusions.⁴⁶

3.2 Theory

To in practice measure how Cuba has played a part in the making of the UDHR, and to answer the second question of what differences and similarities that are to be found between the Cuban draft of human rights versus the final product of the UDHR I have used Martha Nussbaum's list of ten capacities to compare their draft with the final declaration. I have chosen to frame them according to Nussbaum's list to see how they differ and where the two meet and as a way of putting the rights into a framework in order to compare them. By doing so I also want to add that the way Nussbaum shaped her list of capabilities has a much broader meaning than the way that I will use it. Her intent is for it to be used as a tool to not only frame rights but to research how they are being implemented. I will only do a framing of the rights Cubas draft and the end product of UDHR using Martha Nussbaum's headings for capabilities. This is how I have chosen to implement Nussbaum's theory in my research since Cubas suggestion was not put to practice. So to research how these rights were put to practice would in fact not be possible, and would be another type of research than the one I aim to make. My aim here is only to compare the draft of Cuba's rights to the final product of UDHR by using her way of differentiating the different terms and headings of capabilities into rights. They will only be categories of rights, rather than how they are outworked in practice which is more of her focus.

⁴⁶ Elo, Satu & Kyngäs, Helvi, "The qualitative content analysis process", JAN Research Methodology, 22 Nov 2008, pg. 109-111, Journal of Advanced Nursing. Vol 62 (1), 2008, pg. 107-15

The reason why I have chosen Nussbaum's list of capabilities as a framework of comparing the rights made up by Cuba and UDHR, is because I think that they entail many of the rights listed and that they have a width that can encompass the majority of them. This makes it easy to see how these rights might differ and be similar to one another, which is the point of this part of my research. Nussbaum's theory of capabilities is for individuals, rather than groups, and is a tool to measure a person's quality of rights.⁴⁷ She also gives light to the debate of how universal human rights is difficult given cultural diversity, and uses UDHR as an example. Countries like Egypt, China and France formulated the declaration in such a way that it would be acceptable to different religious backgrounds and cultures, she says.⁴⁸ However, she is not a big fan of the United Nations and call them “a positive disaster when it comes to accountability of representatives to the entirety of a people”⁴⁹, and compares the UN and the EU to a world state, which she thinks is a bad idea. This is important to keep in mind as I aim to use her theory to compare two sets of lists of rights, her aim was not the same when she made her theory. However, I have found it helpful to use it in this way. Out of these ten categories I have made a qualitative content analysis to compare Cubas suggestion of rights with UDHR by making a categorization matrix through a scheme presented as appendices.⁵⁰ The categories are made out of the description found below.

I have chosen to interpret Nussbaum's capability “Control over one's environment” as being treated as an equal connected to having rights in the judicial system, in order for all the rights in the suggestion of Cuba and the UDHR to be placed in a suiting category. Judicial rights are not specified in this category of hers and I realise this might not be the way she intended for this category to be used, however I found it the most suiting category for judicial rights brought up by both Cuba and UDHR.

⁴⁷ Nussbaum, Martha Craven, “*Creating capabilities: the human development approach*”, Belknap Press of Harvard University Press, Cambridge, Mass., 2013[2011], pg. 18, 35

⁴⁸ Nussbaum Martha Craven, 2013, pg. 101-103

⁴⁹ Nussbaum Martha Craven, 2013, pg. 120

⁵⁰ Elo & Kyngäs, 2008, pg. 107-113

According to how it is about equal rights in different areas of life, such as government and employment, I find this category most suiting when it comes to equality before the law.

These are her ten categories and a description of them, the foundation of how I have chosen to place the rights into the matrix.

Life

Being able to live a full normal life, without anything hindering you from living to an age of a full life.

Bodily health

To have the opportunity of good health, as well as reproductive health. To have food and shelter.

Bodily Integrity

Being free to move wherever one wants, to be protected against violence, as well as sexual assault and domestic violence. To get to choose sex partner and reproduce freely.

Senses, Imagination and Thought

Being able to think, reason and imagine. To have adequate education. Being able to have a free choice of expression when it comes to religion, music, literature etc. Being guaranteed the freedom to speak and think freely in matters of politics and religion. To be able to experience pleasure and avoid pain.

Emotion

To make attachments to people and things we care for, to express our emotions such as longing, gratitude, love, justified anger and grief freely without fear and angst.

Practical Reason

To be able to shape our own perception of what is good in our lives, and to freely act on it. To be able to reflect critically in terms of planning one's life.

Affiliation

To be able to affiliate and seen as equal to others regardless of; and not being discriminated on the ground of; race, sex, sexual orientation, ethnicity, caste, religion, national origin. To be able to live side by side with others, to care and interact with them.

Other Species

Paying respect and care to our relationship with our nature, animals and plants.

Play

To be able to laugh, engage in activities without any other purpose attached to it than that it's just for fun, and partake in relaxation that rejuvenates us.

Control Over One's Environment

Being able to vote for a government of your choice, being able to partake in politics, to speak and associate freely. To have an equal right to own land and property as anyone else. To have an equal right to seek for employment, and when employed - to be seen as an equal human being and treated in the same way as others.⁵¹

⁵¹ Nussbaum Martha Craven, 2013, pg. 33-34

4 Examination about how Cuba influenced the making of UDHR

To answer the question how Cuba played a part in the making of the UDHR I have decided to go back to the meeting documents of the UN and the start of the making of the UDHR to find the answer. I have used official meeting documents that can be found in the archives of the UN, and open for review by anyone.

4.1 Background

The UDHR was the first declaration agreed upon by the members (10 December 1948, Paris), after the UN charter (26 June 1945, San Francisco) - which was put into practice 24 October 1945.

A Preparatory Commission was put into place after the charter was agreed upon and their role was to make sure that what was signed would now be put into practice. In terms of human rights, they had a meeting 12 November 1945 and notes taken tells us about a commission that would promote human rights and amongst other things formulate an international bill of rights. This would be based on a request and provision made by the General Assembly or the Economic and Social Council.⁵²

⁵² PC/EX/113/Rev.11, 12 November 1945

“Report by the Executive Committee to the Preparatory Commission of the United Nations”, in Schabas William A, 2013, pg. 1-2

4.1.1 Cuba was first to make a claim for human rights

The members of the UN charter were then invited to make suggestions for what should be a part of the First Part of the First Session of the General Assembly, based on the work of the Preparatory Commission. The Executive Secretary received three suggestions from the members before the deadline (midnight 4 January 1945) with supplements as to what they wished to include on the agenda.

1. The first was from the United Kingdom (UK) and was regarding the UNRRA - to support and give relief to victims of war by providing for example food and shelter.
2. The second was from Cuba, their suggestion was to make some changes to the report regarding the constitution of the General Committee. They wanted to include the declaration of the rights of man, and the rights and duties of nations to the agenda. And in case this would be approved they were also happy to make a suggestion of what these declarations could contain, in order to support the ongoing discussions of their content.
3. The third was a collection of members who had joined together to raise a topic regarding the discovery of atomic energy and other related matters (United Kingdom acting on behalf of Sovjet, United States, France, China and Canada).⁵³

These are all suggestions on what these members sought as so important that it should belong in the very core of the United Nations, or at least so important to them that it should be added to the protokoll of the very first meeting, based on the agreements made in the UN Charter. That was what they responded to when they sent in their requests to the secretary before the deadline.

⁵³ A/3, 5 jan 1946, (A/BUR/1 of 11 jan 1946, is a similar document), Also found in Schabas, 2013, pg. 3-4, “*Supplementary List of Items for Inclusion in the Agenda of the First Part of the First Session of the General Assembly*”

The first one made by the UK was regarding support of victims of the war. This tells me that the United Nations very clearly has its roots in the WWII, as we have seen in other historians storylines of how the UDHR came to be. The war and/or wars (WWI and WWII) was a catalyst to what both the UN and the UDHR became. The suggestion of supporting the war victims of the UK, only supporting this statement. Cuba was the only member who came with a suggestion of adding two declarations, about the rights of man and the rights and duties of nations. The third suggestion from the UK (together with some other members) was regarding atomic energy and related matters as such. In other words, this too was somehow a peace and war related topic according to my analysis.

This makes Cuba stand out amongst the other members of the UN for wanting to include the rights of man, or human rights, even in the Agenda of the First Part of the First Session of the General Assembly. I therefore come to the conclusion that Cuba was in fact the first member to make a claim for human rights to be included at the General Assembly agenda (to take place at their first session), out of all the other members of the UN all given the same opportunity to make suggestions of supplements to the agenda of the General Assembly.

4.1.2 The discussion and response of the Cuban suggestion

From the Cuban suggestion then follows two documents, one with what was said in the room leading up to the vote, and the second with a result of what the other members voted in terms of placing human rights on the agenda of the General Assembly. A meeting took place on 14 January 1946 to discuss the Cuban suggestion of supplement to the agenda of the General Assembly. The president of the meeting, Paul-Henri Spaak, statesman from Belgium, then made some comments to the suggestion of Cuba. Spaak had a number of important roles in Belgium, but also in the Council of Europe and the North Atlantic Treaty Organization.

Ukraine also had comments on the suggestion from Cuba and after a vote the suggestion was voted down. This is the key document of my research and I have therefore chosen to quote some of the main arguments that led up to the vote for context. The suggestion from Cuba to insert these two new documents in the agenda of the First Part of the First Session is based on the charter of the UN, more specifically the preamble and Article 13 which is quoted by Cuba.

Mr. Dihigo was a diplomat and a professor at the University of Havana as well as a spokesman for Cuba in this meeting.⁵⁴ He explained why Cuba had made the suggestion to start the work of making a declaration on the rights of man and a declaration on the rights and duties of nations, and why it should be included in the agenda of their first session together.

He referred to the preamble of the UN that states that they are to support human rights, and the value of mankind. He also referred to the 13th article of the charter which goes on to say that the General Assembly should develop and promote international law, as well as the realization of human rights. Dihigo goes on to explain how important it is that the UN makes a stand for “the man on the street” and mentions human rights, to live up to these promises given to the world through the UN charter in San Francisco in 1945.⁵⁵

Spaak, the president of the meeting then decided to speak himself after giving others a chance to speak without any response from the room. He said that there in fact was such an agreement, that it was an important question, but that the General Committee saw no need to make a “special provision for them in the agenda”⁵⁶, but rather be dealt with through the Committee, as decided previously by the Preparatory Commission.⁵⁷

⁵⁴ “Ernesto Dihigo y Lopez Trigo (1896–1991) was a Cuban law professor who served as foreign minister and, following the overthrow of the Batista regime, as Ambassador to the United States. “ Schabas William A, 2013, pg. 6

⁵⁵ A/PV.7, “*Seventh meeting (of the General Assembly)*”, 14 January 1946, Schabas, 2013 pg. 6-8

⁵⁶ A/PV.7, in Schabas William A, 2013, pg. 9

⁵⁷ A/PV.7, in Schabas William A, 2013, pg. 8-9, referred to earlier in Schabas William A, 2013, pg. 1-3

Dihigo from Cuba agreed that The Economic and Social Council would be the organ to make sure human rights would be pursued by the members, but that it according to the Charter should be the General Assembly who should agree upon them, and that it would tell the world that the UN cares enough to take care of the problem by making a statement at their very first session.

If everybody agrees that this problem is to be discussed and debated in this Assembly, why not insert it in the agenda? To insert it in the general agenda will have this advantage: That we shall tell the whole world that we are taking care of this fundamental problem.⁵⁸

The Ukrainian representative and the Soviet Socialist Republic representative, Manulski, decided to speak up in response to Dihigo. He was concerned that the rights of peoples and nations might collide and lead to a “sacred right” for the people to overthrow the government. He thought the proposal should be withdrawn and that the organization should get on with their work and figure it out later.

I would also point out, regarding the rights of nations, that certain constitutions, for instance, that of 1793, define the rights of peoples, and even recognize as sacred their right to overthrow the Government in the case of disagreement. [...] I think the question is not yet ripe. We are at the beginning of our organization. Let us get on with our work and, later, we shall find formulas upon which we can agree [...] I think the Cuban proposal should be withdrawn.⁵⁹

After this discussion came a vote with a show of hands in the room if they were in favour or against the Cuban proposal. Should these two declarations be accepted to be a part of the agenda of the General Assembly's first session or not? The delegation of Cuba suggested to add a declaration of the international rights and duties of man and a declaration of the rights and duties of nations.⁶⁰

⁵⁸ A/PV.7, in Schabas William A, 2013, pg. 9

⁵⁹ A/PV.7, in Schabas William A, 2013, pg. 11

⁶⁰ A/PV.7, in Schabas William A, 2013, pg. 12

These were the results:

Number of states voting: 49

Voted against: 27

Voted in favour: 12

Abstained: 10

Absent: 2⁶¹

The majority voted against and instead the Committee on the Organization of the Economic and Social Council were responsible to make a proposal for an international bill of rights.⁶²

“After discussion the General Committee agreed: That the resolution by the Cuban delegation [...] while of great importance, could not appropriately be included in the supplementary list [...] recommends the establishment of a Commission on Human Rights and outlines the functions and competence of that Commission”.⁶³

It seems like the operations of how the States should function as an organization like the UN as sovereign powers next to each other was more important, and more convenient to discuss in the early days after the UN Charter and the beginning of the UN's work.⁶⁴ And it was not the first time the member states had united in the argument that human rights might just result in criticism of the member states.⁶⁵

⁶¹ Schabas William A, 2013, pg. 13

⁶² E/ORG/3, “Committee on the Organization of the Council, First Meeting” Held on Wednesday, 30 January 1946 at 5 p.m. and 2 February 1946, E/ORG/1, “Committee on the Organization of the Economic and Social Council Proposals Concerning Terms of Reference of Commissions to be Established by the Economic and Social Council for Consideration by the Drafting Sub-Committee Commission on Human Rights: (Paragraphs 15–17, page 36)” 30 January 1946, Schabas William A, 2013, pg. 13- 14

⁶³ Schabas William A, 2013, pg. 5

⁶⁴ A/BUR/6, General Committee “Report to the General Assembly on the Supplementary List of Items to be Included on the Agenda of the First Part of the First Session”, 14 January 1946

⁶⁵ Mazower Mark, 2004, pg. 391

4.1.3 Cubas declaration of Human Rights

In the beginning of February 1946, the Economic and Social Council commenced their work in the making of an international bill of human rights.⁶⁶ As the Cuban delegation had already suggested previously, they were prepared to make a suggestion of a declaration of human rights, if their suggestion were to be approved to be included in the General Assembly's agenda - all in order to support and spark the conversation and discussion as to what a document as such should entail.⁶⁷ However, it was voted down. So one might think that their efforts in influencing human rights for the world would end there. But it did not, at least Cuba would not stop speaking up and advocating for it. In fact they sent a letter directed to the President of the Economic and Social Council where they want to remind the President about the importance and urgency of human rights. They referred to the proposal they had made to place the topic of human rights on the agenda of the General Assembly, and sent a draft of a “Declaration on Human Rights”, with the intent that it would be used as a working document for the Council. Not for the Cubans to in any way be exclusive, but as a way to spark this very important topic and get to work as soon as possible with the formation of an international bill of rights, by making a draft of human rights for the Council to consider.⁶⁸ Then follows a document with suggestions from the Delegation of Cuba in terms of a “Declaration on Human Rights” as they themselves call it. It is the first time the international bill of rights has been given this name, and it is Cuba who puts it this way. They also encourage the Committee to speed up their work for the sake of “the fundamental human rights, and the dignity and worth of men.”⁶⁹

⁶⁶ E/ORG/1, 2 February 1946, Schabas William A, 2013, pg. 14

⁶⁷ A/3, (A/BUR/1 of 11 jan 1946, is a similar document), 5 jan 1946, Schabas William A, 2013, pg. 3-4,

⁶⁸ E/HR/1, Original text: Spanish, “*Draft declaration on human rights and letter of transmittal*” Cuban Legation Great Britain, The Cuban Delegation to the General Assembly of the United Nations, “*Draft Declaration on Human Rights*”. (document was issued 22 April 1946), 12 February 1946, London, Schabas William A, 2013, pg. 16-18

⁶⁹ Schabas William A, 2013, pg. 16

My Delegation made the proposal that the question of Human Rights should be placed on the Agenda of the Assembly [...] ask the Economic and Social Council to concern itself with this matter as soon as possible [...] thus the United Nations would have shown that at the very outset it was mindful of the affirmation in the Charter to defend the fundamental human rights [...] The final work must be the product of a common effort and reflect the public opinion of the world; Cuba persuaded of the importance of this problem would like to make its modest contribution in the form of the enclosed draft which as already stated, is merely a working document which may come in useful for accomplishing the task which will shortly have to begun.⁷⁰

4.1.4 The work of making an international bill of rights commences

The Economic and Social Council then went on to make a Commission on Human Rights with one of their main tasks being to make an international bill of rights. The Commission consisted of these members initially:

- Paal Berg, Norway
- Dusan Brkish, Yugoslavia
- Alexander Borisov, USSR
- René Cassin, France
- M. Fernand Dehousse, Belgium
- Victor Raúl Haya de la Torre, Perú
- K.C Neogi, India
- Mrs. Franklin D. Roosevelt, USA (this is how the protocol referred to Eleanor Roosevelt)
- C.H John Wu, China⁷¹

⁷⁰ Ibid

⁷¹ E/HR/19, 15 May 1946, Schabas William A, 2013, pg. 49

In the early days of their work, they agreed that a collection as full as possible should be made of literature and as full texts as possible to help the Commission on Human Rights in their mission of the making of an international bill of rights.⁷² In a later meeting, the Cuban draft is considered as an inspirational document in the making of their bill of rights, however “the chairman did not consider it necessary or advisable to circulate the Cuban or Panamanian declarations with the draft bill of the Commission”.⁷³

4.2 Conclusion and analysis

I have aimed to answer the question “how did Cuba play a part in the making of the UDHR?” The answer I have found in the meeting documents and the early scripts written down in the making of the UDHR is that they were the first and only member who wanted to include human rights on the agenda of the First Part of the First Session of the General Assembly. They were also the first member to write a draft on human rights, which they sent to the President of the Economic and Social Council with the hopes that they would take this issue seriously and act quickly, to show the world that the UN truly cares about the promises made in San Francisco (when the UN Charter was signed) that the organization and its members truly care about “man on the street”.⁷⁴

The earliest documents on human rights, collected in the Schabas collection of documents leading up to the UDHR, is made by the Preparatory Commission. They say that there should be a Commission on Human Rights which should assist the Council on its responsibility in the Charter to promote human rights.

⁷² E/HR/8, “*Summary Record of Meetings of the “Nuclear” Commission on Human Rights, Second meeting held on Tuesday, 30 April 1946 at 10:30 a.m. 30 April, 1946*”, Schabas William A, 2013, pg. 39

⁷³ E/HR/15, “*Summary Record of Meeting of the Nuclear Commission on Human Rights*”, 8 May 1946, Schabas William A, 2013, pg. 45

⁷⁴ A/PV. 7, 14 January 1946, Schabas William A, 2013, pg. 7-8

It were to “encourage the acceptance of higher standards in this field and help to check and eliminate discrimination and other abuses”.⁷⁵ As well as formulating an international bill of rights amongst other declarations regarding; “the status of women, freedom of information, protection of minorities, prevention of discrimination on grounds of race, sex, language, or religion; and any matters within the field of human rights considered likely to impair the general welfare or friendly relations among nations.”⁷⁶

In the history of the making of UDHR, as well as in the meeting agenda of the UN organs, Cuba is usually put together with Panama for making suggestions of human rights. However I found as I continued to read those silent lines in between, that even here Cuba was first to make a suggestion what the declaration of human rights should entail. They sent a letter to the President of the Economic and Social Council (even after the General Assembly voted against their suggestion) with a draft of human rights. It was dated 12 February 1946 but was issued 22 April 1946. The “Statement of Essential Human Rights Presented by the Delegation of Panama”⁷⁷ is dated 26 April 1946. Another interesting fact is that Panama abstained to vote when the suggestion was made by Cuba to put human rights in the first agenda of the General Assembly.⁷⁸

Cuba was first to suggest human rights to the agenda, they were also the first to make a draft of human rights, but they were not included to be a part of the committee who was later seen as the authors of the UDHR. René Cassin, due to his part played in the committee, will later receive the Nobel Peace prize. However much they have affected the end product of the UDHR, I have decided to analyse in the next segment where I will look at the draft of human rights made by Cuba and compare it to the UDHR.

⁷⁵ Schabas William A, 2013, pg. 1-3

⁷⁶ Schabas William A, 2013, pg. 3

⁷⁷ E/HR/3 or A/148, 26 April 1946, Schabas William A, 2013, pg. 21

⁷⁸ Schabas William A, 2013, pg. 12

This will not let us in on the information however much or little the committee decided to notice the draft or not, since there is no real record of this - however, we do know that they decided to keep going with their work without looking at the Panamanian or Cuban draft that much longer. They invited the other members to send in their drafts and their rights. But my analysis might shed some light just where there are differences and where there are similarities.

Without the initiative made by Cuba to push for human rights even for the first session of the General Assembly, I do not think that the process of the UDHR had been started that soon. The UN was forced to act because of the pressure of its members to be held accountable for what was agreed about the topic in the UN Charter. Alongside Cuba came others with similar suggestions, such as Panama. If it was not for Cuba, I do not believe it would have been the first response of the UN to immediately shape the UDHR. There was a fear that the government would be overthrown if the people were given too many rights, and too much freedom, and too much responsibility for the people's well being was placed on the government. The main thing was to get going with the organization, and the human rights issues would be a later concern.⁷⁹

Later on the supremacy of the state had to be side by side and challenged by human rights in the same document, the UDHR.

⁷⁹ See above, in the meeting documents, Ukraines commentary about the Cuban suggestion.

5 Analysis and discussion

5.1 Analysis background

I aim to answer the second question “what differences and similarities are to be found between the Cuban draft of human rights versus the final product of UDHR?”

I have put Cubas rights into a code system of CX - C referring to Cuba and X the number in the declaration on human rights made by them, and the UDHR has been put into AX - A referring to “Article” and X the number of the article in the UDHR. I have also made a short summary of the rights represented by CX and AX in order to compare them easily. I have used my own interpretation of Nussbaum's list of capabilities as categories, this description is to be found in section 2, “theory”.

As mentioned before, these capabilities were framed to measure how rights are put to practice, to measure capabilities, but I have used them to frame the rights of the UDHR and the suggestion of rights made by Cuba. All of the rights have been placed in the matrix, leaving only one category empty; *Other Species*, paying respect and care to our relationship with our nature, animals and plants. The reason is that neither Cuba nor UDHR mentions this.

Cubas document is a draft of rights which they sent to the President of the Economic and Social Council, with the hopes that it would be used as a working document when the international bill of rights was going to form.⁸⁰ The declaration begins with this explanatory letter and then goes on with a list of rights. Every right starts with “the right to”, and consists of 22 articles.

⁸⁰ E/HR/1, 12 February 1946, Schabas William A, 2013, pg. 16-18

The UDHR begins with a preamble explaining what is to follow and the process leading up to the rights, it consists of 30 articles and speaks mainly of rights, but also freedoms.

All of the articles of Cuba and the UDHR has been put into the matrix according to Nussbaum's ten categories (with the only exception of one category not fitting any of the declarations, as mentioned above). In total 52 articles has found one out of nine categories to fit in, according to the headings of Martha Nussbaum's list of ten capabilities as an inspiration in naming them all. In doing this I have drawn some conclusions by comparing the categories and short summaries. I would like to add that I myself have made the wording summing the articles into a few words in to compare them successfully. In order to do so I have chosen to change some of the wordings of the rights to get a bigger picture, all to follow the structures set up by Elo and Kyngäs to make a successful qualitative content analysis from which I have then analyzed the data and made my conclusions.⁸¹ It is however possible that other researchers might find other conclusions than me based on the same material, given the way I have interpreted both the articles and Nussbaum's list of ten capabilities in this matrix scheme.

By making this clear, I would now like to make an account of some of my observations through this analysis. You will find the scheme which I am analyzing in the appendices. All of the articles of the rights made by the authors of the UDHR and the draft of human rights made by Cuba are organized according to which one of the ten categories from Nussbaum that I have analyzed is their best match. In order to visualize this they are colour coordinated and structured with Cuba's articles first following the UDHR articles second in each of the categories.

5.2 Analysis of scheme

⁸¹ Elo & Kyngäs, 2008, pg. 107-15

In general I have found it surprising that there are more similarities than differences. It is surprising to me given the fact that Cuba made this draft in the very beginning of the UN, right after the first session of the General Assembly, within months. Something that took the UN and the committee entrusted with the work of shaping the UDHR almost three years, from February 1946 to December 1948. And yet, there are many similarities. What Cuba did in 22 articles and a few months (from what we know from the meeting agendas when Cuba made a suggestion in January and then sent their suggestion of rights in February), the UN did in 30 articles and almost three years.

What I have discovered by reading the meeting documents from the very beginning and start of the UN is that Cuba was in fact the first member who wanted to put human rights on the First Part of the First Session of the General Assembly. But their suggestion was voted down, one of the arguments in the room before the vote being “[...] that of 1793, define the rights of peoples, and even recognize as sacred their right to overthrow the Government in the case of disagreement”⁸²

I find similar wordings and rights in 23 out of 32 columns of summed up rights in total, within eight of the ten categories, one being their united absence in the column “other species” (see above).

There are however two categories where they differ quite greatly. In the category of “emotion” I could only find a match in Cubas article 10, about the right to an adequate maintenance of spiritual needs, both for the person and their family. In the category of “play” there was only a clear match in the UDHR article 24 and 27, referring to the right to rest, holiday with pay and to enjoy the arts. I say that they differ quite greatly, but it could also be argued that they are quite similar, both of them are in some way referring to the right of the inner being of a person to be satisfied and protected.

⁸² A/BUR/6, 14 January 1946

To marry and lead a family is brought up by the UDHR in article 16, whilst it is only mentioned in the Cuban article 10, in regards to meeting the spiritual (and material) needs of the family, Cuba do not mention the right to the covenant of marriage as the UDHR does. Neither does Cuba refer to the family of any significant value in terms of human rights, whilst the UDHR claims that “the family is the natural and fundamental group unit of society and is entitled to protection by society and the State”.⁸³

In terms of “control over one's environment” and especially in law and justice, there are some differences. The UDHR containing eight more articles than the Cuban draft of rights might also have something to do with the fact that the UDHR have a few more rights where Cuba does not. This category being one of them that I would like to highlight. Cubas article 16 spells out immunity from expropriation whilst the UDHR in article 9 brings up that no one should be subject to arbitrary arrest, detention and exile. Article 11 in the UDHR also uniquely compared to Cuba speaks of the right to remain innocent until proven guilty, and their 30th article is also unique in the sense that it brings to a close all the articles of the declaration by declaring that all of the rights should be fully realized in the social order.

5.2 Discussion

Further research is recommended in the preface of the Schabas collection of the documents leading up to the UDHR and recommends to extend the research by looking at the memoirs of those who were the decision makers and the authors of the UDHR, and I would like to suggest - the draft of human rights made by Cuba. Another recommendation made is to research the meeting documents of the governments that were a part of the UN, and those who were not. To search for unpublished papers by those a part of the debate.⁸⁴

⁸³ “*Universal Declaration of Human Rights*”, 10 December 1948, article 16.3

⁸⁴ Schabas William A, Preface, 2013, pg. xxxvii

There is also more research to be made in the history where it all took place, the making of the UDHR and the Cuban draft of human rights all took place in an appointed time in history right after two great world wars, and even if this is not a part of their declarations it would have been greatly impacting on their view on human rights.

Out of my scheme and matrix of all the rights it would also be of value to make a research that looked into the different terms and wordings, and research the meaning of them to further find more possible similarities as well as differences.

If the research would have involved other primary sources, the result might also look different. To research for example the meeting documents of the committee for a longer time period to see how much they involved the Cuban suggestion in the end. Further research would show when, how and if the Cuban draft of the “Declaration on Human Rights” came up in the work again. But one thing is for sure, they were not a part of the commission that set up the declaration in the end. And they are not mentioned more than to a small reference in some of the greatest works of the history of how UDHR came to pass.

Further research could possibly be made in the Cuban documents in Spanish. I have however not been able to find any writings by Dihigo, the Cuban delegate who spoke on their behalf and emphasized the importance of including human rights in the first session of the General Assembly, in my research. Another way of further research could be to research the other people present in the UN delegation of Cuba at this time to look for memoirs and meeting agendas that potentially led up to their suggestion of human rights to the President of the Economic and Social Council of the UN. Navanetham Pillay put the study of the UDHR and human rights in context in a way of saying that depending on the preparatory work made, there will be different meanings to the content of human rights.

Henceforth, those who research the meaning and content of human rights will turn systematically to this record of the early debates. New insights into fundamental rights will emerge as the preparatory work is carefully scrutinized.⁸⁵

6 Conclusion

My goal with this research has been to answer the twofold question of how Cuba played a part in the making of the Universal Declaration of Human Rights, and what differences and similarities that are to be found between the Cuban draft of Human Rights versus the final product of the declaration. To do so I have systematically gone through a chosen select of six key meeting documents in leading up to the making of the Universal Declaration of Human Rights published by the United Nations and put together in a collection by William Schabas. After having gone through the meeting documents I discovered that Cuba was the first member of the United Nations who made a claim for an international bill of rights in the First Part of the First Session of the General Assembly. They were also the first to make a draft of human rights in order to suggest what such a bill of rights could look like, as well as to open up an international debate and find a conclusion. All with the aim of coming into a wide agreement about the rights of everyday people like you and me. I therefore argue that Cuba were the catalysts in the making of the Universal Declaration of Human rights. They were first to suggest it, and to make an example of what it could look like. Without them the process might have taken much longer. I then made a content analysis of the Cuban draft of Human Rights compared to the Universal Declaration of Human Rights using Martha Nussbaum's list of ten capabilities as a foundation to structure them and get an overview to then analyze from and make conclusions. I found that there were more similarities than differences.

⁸⁵ Pillay Navanetham, in Schabas William A, 2013, pg. xliv

The wordings look similar in 23 out of 32 columns of summed up rights in total, within eight of the ten categories. A difference was that Cuba does not refer to the family of any significant value in terms of human rights, whilst the UDHR claims that “the family is the natural and fundamental group unit of society and is entitled to protection by society and the State”.⁸⁶ I could therefore come to the conclusion that there were more similarities than differences in the Cuban draft versus the final declaration.

⁸⁶ “*Universal Declaration of Human Rights*”, 1948, article 16.3

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Appendices

1. The Cuban Delegation to the United Nations, “Draft Declaration on Human Rights”

UNITED NATIONS	NATIONS UNIES	UNRESTRICTED
ECONOMIC AND SOCIAL COUNCIL	CONSEIL ECONOMIQUE ET SOCIAL	E/HR/1 22 April 1946 ENGLISH ORIGINAL: SPANISH

COMMISSION OF HUMAN RIGHTS

DRAFT DECLARATION ON HUMAN RIGHTS AND LETTER OF TRANSMITTAL

CUBAN LEGATION

GREAT BRITAIN

London, 12th February 1946

To the President of the Economic and Social Council.

Dear Sir,

The Cuban Delegation to the General Assembly of the United Nations has the honour to present to the Economic and Social Council the attached draft "Declaration on Human Rights", in order that it may be used as a working document by this body when it decides to discuss this matter.

My Delegation made the proposal that the question of Human Rights should be placed on the Agenda of the Assembly. In doing so, we did not intend that the contents thereof should be discussed in the course of this Session, as the question is one which requires careful study and wide discussion; but we merely had in mind that it should be decided to ask the Economic and Social Council to concern itself with this matter as soon as possible with a view to preparing the relative draft; thus the United Nations would have shown that at the very outset it was mindful of the affirmation in the Charter to defend the fundamental human rights, and the dignity and worth of men.

The motion was rejected as unnecessary in view of the fact that discussion of Chapter III of the Preparatory Commission's Report offered ample opportunity for raising the problem. As this Chapter deals with the organization and duties of the Economic and Social Council and as the creation of a Commission on Human Rights is provided for therein, the Cuban Delegation, as a Member of the Council, has pleasure in offering the attached draft.

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Much has already been written on this question and other Delegations will no doubt also put forward valuable drafts. The final work must be the product of a common effort and reflect the public opinion of the world; Cuba persuaded of the importance of this problem would like to make its modest contribution in the form of the enclosed draft which as already stated, is merely a working document which may come in useful for accomplishing the task which will shortly have to be begun.

I have the honour, etc...

Felipe Paoa
For the Cuban Delegation.

Translation from Spanish.

CUBAN LEGATION

GREAT BRITAIN

THE CUBAN DELEGATION

to the

GENERAL ASSEMBLY OF THE UNITED NATIONS

Draft Declaration on Human Rights

Every human being shall have the following rights :

- 1^o.- The right to life, to liberty, to personal security and to respect of his dignity as a human being.
- 2^o.- The right to shape his life according to his calling so as to enable him to develop his personality and to seek happiness within the limits of life in the community.
- 3^o.- The right to free investigation to enable him to form his opinions, and to express these opinions freely, subject to his being held responsible for his actions.
- 4^o.- The right to choose and profess freely his religion without any restriction other than that imposed by respect for morality and public order.
- 5^o.- The right to equality before the law without distinction as to race, religion, colour, class or sex.
- 6^o.- The right to protection from unjustified interferences with his person, family, home, reputation or private activities.
- 7^o.- The right to equal opportunity with others in shaping his life, raising the standard of living, and fulfilling a useful function in society.
- 8^o.- The right to education which will enable him to improve himself in every respect and will lead to his becoming a useful member of society and sharing in all the material and spiritual benefits of civilisation.
- 9^o.- The right to work under conditions fitting to his status as a human being and to receive, in return, a remuneration in proportion to the value of his contribution to the community.

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- 10^o.- The right to receive adequate maintenance in the event of unemployment, sickness or chronic illness, to meet his own and his family's material and spiritual needs.
- 11^o.- The right to adequate food.
- 12^o.- The right to hygienic living conditions and to clothing suitable for the climate in which he lives.
- 13^o.- The right to live in surroundings free from avoidable diseases.
- 14^o.- The right to adequate medical assistance.
- 15^o.- The right to meeting and associating with his fellow-men for fostering the pursuit of permissible aims.
- 16^o.- The right to immunity from expropriation other than in pursuance of legal proceedings or for the benefit of the community.
- 17^o.- The right to protection from competent courts free from all influence contrary to justice.
- 18^o.- The right to trial without undue delay, to self defense, and to protection from sentences except in pursuance of laws in force prior to the act with which he is charged.
- 19^o.- The right to immunity from arbitrary arrest and to a review of the regularity of his arrest by ordinary tribunals.
- 20^o.- The right to resist any form of oppression.
- 21^o.- The right to sanctuary in a foreign country when escaping from persecution of a political, religious or racial nature.
- 22^o.- The right to choose his ruler and to share in the government of his country.

London, 12th February 1946.

2. The Universal Declaration of Human Rights

Universal Declaration of Human Rights

Preamble

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, therefore,

The General Assembly,

Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by

teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3

Everyone has the right to life, liberty and security of person.

Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6

Everyone has the right to recognition everywhere as a person before the law.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier

penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13

1. Everyone has the right to freedom of movement and residence within the borders of each State.
2. Everyone has the right to leave any country, including his own, and to return to his country.

Article 14

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.
2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15

1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17

1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20

1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

Article 21

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right to equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
3. Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.
2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

3. Scheme matrix Cuban draft versus UDHR

