

The UN Human Rights Council Report Card: 2007-2009

Special Report

September 10, 2009



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Overview

This report card assesses the progress of the United Nations Human Rights Council over a two-year period that begins with the conclusion of the institution-building process in June 2007 and extends through the end of the Council's 11th Session in June 2009. The report assesses the performance of the Council on a number of key issues, including its ability to take timely action on some of the most egregious human rights abuses occurring in specific countries or regions of the world, and its ability to address emerging global threats to fundamental human rights such as freedom of expression and freedom of association. The report also focuses on the ability of nongovernmental stakeholders—human rights defenders and civil society organizations—to engage with and positively affect the functioning of the Council. Finally, the report assesses the actions of the U.S. government and the broader community of the world's democracies—both of which bear special responsibility for ensuring the Council's effectiveness.

The **primary finding** of the report is that a small but active group of countries with very poor human rights records have so far succeeded in limiting the ability of the Council to protect human rights, despite their minority status on that body. Member states that Freedom House designates as Not Free make up less than one-fifth of the Council, but devote considerable resources to their work in Geneva.

Other key findings include:

- **Failing Grades:** The Council receives a failing grade on 4 of the 11 criteria reviewed. It notes the council's failure to call special sessions or pass resolutions on pressing human rights issues and to respond to the growing global threat against freedom of expression. Democracies are faulted for failing to uphold human rights standards when voting on key resolutions and when choosing new Council members.
- **Special Rapporteurs:** The system of special rapporteurs provides the Council with its only passing grade for producing quality reports despite limited staff and cooperation from the governments under review. However, there is growing pressure to eliminate country-specific rapporteurs and to weaken other thematic mandates.
- **Resolutions and Special Sessions:** The Council has issued condemnatory resolutions on only a few countries since 2007, including a disproportionate number on Israel. Recent resolutions on Sudan and Sri Lanka were weak and no resolutions passed to

address systematic abuses in countries such as Belarus, China, Cuba, Equatorial Guinea, Libya and Zimbabwe. There is slight improvement in the Council's use of special sessions, but overall its performance remains disappointing.

- **Universal Periodic Review:** This consensus-based mechanism for monitoring the human rights records of all UN members has proven useful mainly for countries Freedom House designates as Free or those ranked near the top of the Partly Free category. States that are not interested in reform undermine the process by presenting overly positive reports about their records and lining up friendly countries to testify on their behalf. The process should be amended to allow more participation by independent experts and nongovernmental organizations (NGOs).
- **Freedom of Expression:** Some Council members have weakened the mandate on freedom of opinion and expression by requiring that the special rapporteur monitor "abuses of freedom of expression" related to religion or race, in addition to protecting free expression. Likewise, resolutions that urge countries to prohibit anti-Islamic or blasphemous speech continue to easily pass.
- **Flawed Elections:** A significant number of democracies continue to vote for repressive countries during Council elections. A majority of the five regional groups of states decide in advance who will represent them, regardless of their human rights records, and offer clean slates that eliminate competition.
- **NGO Participation:** While there are significant opportunities for organizations to engage with the Council, they face a lack of resources and routine harassment from member states with poor human rights records. The committee that oversees the accreditation process for nongovernmental organizations has become politicized and riddled with some of the world's most aggressive opponents of universal standards on human rights. The committee should be replaced with a professional bureau that will evaluate organizations on a purely technical basis.
- **U.S. Engagement:** The United States, which recently reversed the Bush-era policy of disengagement with the Council, should play an important role in reforming the culture of the Council by introducing important resolutions and by using its political clout to secure the support of other Council members. The Obama administration should make up for lost time by appointing an experienced ambassador exclusively devoted to the Council.

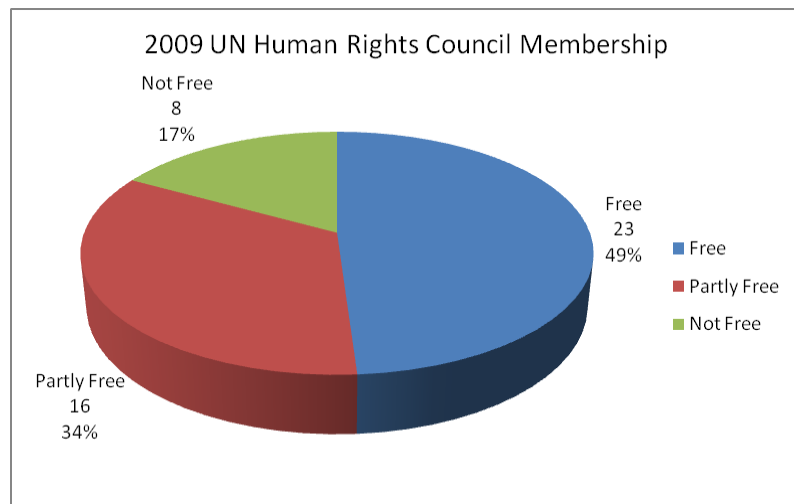
As the world's only global body dedicated to the protection and promotion of human rights, the Council is unique in its potential to address human rights violations in every country. Although its predecessor, the UN Commission on Human Rights, was a largely discredited body by the time it was disbanded and replaced by the Council in 2006, its legacy in establishing universal norms for human rights remains highly significant. The Commission and its first major accomplishment, the adoption of the Universal Declaration of Human Rights (UDHR), paved the way for the subsequent development of charters, covenants, and mechanisms which require member states to commit to some level of respect for the human rights of their own citizens.

Yet hopes that replacing the Commission with the UN Human Rights Council would restore the legitimacy and effectiveness of the UN's premier human rights body have yet to be realized. Instead, a small group of rights-abusing countries have effectively

employed bloc voting to eliminate some country-specific special procedures, weaken the language of condemnatory resolutions or prevent them from being introduced, make a mockery of their own reviews under the new Universal Periodic Review process, and threaten the independence of the Office of the High Commissioner for Human Rights (OHCHR).

These efforts to pervert the mandate of the Council and to roll back universal norms of human rights are deeply concerning, but they are not yet irreversible. While the structure of the Council is not perfect, it is also not irreversibly flawed. Despite the shameful election of countries with poor human rights records to the Council, such countries are greatly outnumbered by democracies that generally respect the human rights of their own citizens. It remains the primary weakness of the Council that far too many of the world's democracies allow highly repressive countries—such as Egypt, China, and Cuba—to get elected to seats on the Council and then follow their aggressive lead.

For the Council to attain greater legitimacy, democracies must step forward and demonstrate their commitment to human rights by making the Council a higher foreign policy priority. In particular, governments that respect human rights must invest the resources and political capital necessary to staff missions in Geneva with experienced diplomats, support resolutions that highlight human rights



Following the May 2009 elections, the Council is composed of 23 Free countries (49%), 16 Partly Free countries (34%), and 8 Not Free countries (17%).

abuses or that establish mechanisms to respond to them, and fully engage in honest and participatory Universal Periodic Review processes.

The considerable resources that human rights-abusing countries invest to manipulate the Council provide proof that its actions remain relevant. Democracies must be willing to devote similar resources to counter the backlash against human rights on the Council.

Report Card

For: The UN Human Rights Council
Period: September 2007 – June 2009

Benchmark	Criteria	Grade
The ability of the Council to take timely action to address urgent human rights abuses around the world, including censuring governments as appropriate	Relevance and independence of special rapporteurs	Mixed
	Quality of special rapporteurs and reports	Pass
	Adoption of resolutions and use of special sessions	Fail
	Universal Periodic Review process	Mixed
The ability of the Council to raise and take appropriate action to address emerging global patterns of human rights abuses	The global threat against freedom of association	Mixed
	The global threat against freedom of expression	Fail
The ability of nongovernmental stakeholders to engage with the Council	Accreditation process for NGOs	Mixed
	Opportunities for NGO engagement at the Council	Mixed
Democracies ¹ play a leadership role in ensuring that the Council lives up to its mandate	Voting records of democracies during Council elections	Fail
	Voting records of democracies on key resolutions	Fail
Efforts by the U.S. government to positively affect the Council's functioning	Level of U.S. engagement at the Human Rights Council	Mixed

¹ For the purposes of this report, Freedom House will evaluate the role played by countries designated as “[electoral democracies](#)” in the 2009 edition of *Freedom in the World*. These 119 countries were found to have met certain human rights standards, including competitive multiparty political systems and regularly contested elections, but do not necessarily maintain the full array of civil liberties necessary to receive a status of Free. As such, the list of “electoral democracies” contains all countries Freedom House designates as Free and a number of countries Freedom House designates as Partly Free.

BENCHMARK 1:

The ability of the Council to take timely action to address urgent human rights abuses around the world, including censuring governments as appropriate

Criterion 1: Relevance and Independence of Special Rapporteurs

Freedom House Assessment: MIXED

The Council's system of special procedures, both country-specific and thematic, remains its most effective tool, but one that is under consistent attack. As part of the institution-building process in 2007, mandates focused on Belarus and Cuba—two of the world's most repressive societies—were sacrificed in a compromise to keep at least some of the other country-specific special procedures in place. These mandates were not renewed during the period of this report despite the systematic human rights abuses that persist in these countries. In addition, the special rapporteur (SR) on the Democratic Republic of Congo was not renewed in 2008, and the mandate of the SR on freedom of expression was altered to monitor instances of undesirable speech, rather than exclusively focusing on impediments to freedom of expression. Among the SRs whose mandates remained intact, several came under verbal attack during the presentations of their reports, and many countries continued to deny them invitations to make in-country visits.

Country-Specific Mandates

There is growing pressure to eliminate the positions of country-specific rapporteurs. The longstanding argument from rights-abusing countries that the Council should focus on constructive dialog rather than condemnation persists and is accompanied by a new argument that the consensus-based Universal Periodic Review (UPR) process is sufficient for monitoring human rights situations in specific countries.

The mandate of the SR on [Sudan](#) has been renewed repeatedly since its establishment in 1993, despite attempts by the Sudanese government and government-organized “nongovernmental” organizations (GONGOs) to close the mandate. The latest session on renewing the mandate in June 2009 featured another heated debate, during which Zambia, Uganda, and Mauritius commendably broke from Egypt's position as head of the Africa group to support the mandate's renewal, now in the form of an “independent expert.”

The [North Korea \(Democratic People's Republic of Korea\) mandate](#) was established in 2004 and extended every year since. In January 2008, the SR was not allowed to enter North Korea. Cuba, along with several other states, opposed the renewal of the mandate, arguing that the situation in North Korea should be assessed only by UPR. Syria called for terminating all country mandates. Pakistan claimed that the SR unnecessarily

politicizes “humanitarian assistance.” The mandate was last renewed in March 2009 for a period of one year.

The [Burma \(Myanmar\) mandate](#) was established in 1992. The Council’s position on Burma, which has few international allies, has been strong. The Council was almost unanimous in commending the SR’s critical report (although Russia criticized the SR for the critical tone of the report and for addressing issues not covered by his mandate). After several refusals to let him enter the country, the SR was allowed to visit Burma in August 2008. The mandate was last renewed in March 2009 for a period of one year.

Thematic Mandates

The independence and integrity of the SR’s mandate for promoting and protecting [freedom of opinion and expression](#) was severely threatened during the period of this report. During the 7th session of the Council, a group of countries led by Pakistan on behalf of the Organization of the Islamic Conference (OIC) altered the mandate by requiring that it cover abuses of freedom of expression “amounting to religious or racial intolerance” rather than just restrictions on freedom of expression. At the Council’s 11th session in June 2009, the SR came under fire from several countries led by Egypt (on behalf of the Africa Group), Pakistan (on behalf of the OIC) and the United Arab Emirates (on behalf of the Arab Group). These countries complained that the SR exceeded his mandate when he signed a joint statement with freedom of expression SRs from regional organizations (the Organization of American States and the Organization for Security and Cooperation in Europe) that declared the concept of “defamation of religions” incompatible with freedom of expression. They also criticized the SR for paying insufficient attention to the new part of the mandate focused on abuses of freedom of expression “amounting to religious or racial intolerance” and threatened to censure him under the Code of Conduct if his performance did not improve.

The mandate on [human rights defenders](#) came under similar attack during discussion of its renewal at the 7th session. Egypt attempted to limit the mandate by challenging the accepted concept that human rights defenders include individuals who are “self proclaimed.” After intense discussion, the mandate was extended for three years, although the status of the mandate was downgraded from special representative to the Secretary General of the UN to that of a special rapporteur of the Office of the High Commissioner for Human Rights.

During the 8th session, the mandate on [extrajudicial, summary, or arbitrary executions](#) was harshly criticized by Sri Lanka, Nigeria, and the Philippines, on the basis that the SR’s report was biased and full of double standards. The mandate, however, was extended by a resolution introduced by Sweden.

Freedom House Recommendations

- The Council should establish or reestablish country-specific mandates where evidence exists of systemic and widespread abuse of human rights, including

- Belarus, Cuba, and other countries that receive the [lowest ratings](#) for political rights and civil liberties according to *Freedom in the World*.
- Democracies must continue to defend the independence and integrity of the UN's system of special procedures and resist efforts to eliminate or otherwise handicap such mandates in light of the new UPR mechanism.

Criterion 2: Quality of Special Rapporteurs and Reports

Freedom House Assessment: PASS

The process for nominating and appointing individuals to the position of mandate holders, which was revised in 2007, relies heavily on the discretion of the President of the Council. The President nominates candidates on the basis of a short list prepared by the Consultative Group, which is comprised of five individuals appointed by the respective regional groups. The short list is itself compiled from a public list of candidates that consists of nominations from governments, NGOs, regional groups, international organizations, and individuals. Essentially, anyone can nominate someone to fill a mandate-holder position under the guidance that they take into account the following qualifications: expertise, experience in the field of the mandate, independence, impartiality, personal integrity, and objectivity. The President of the Council presents his or her nominations at the next regular session of the Council for what has so far proven to be pro forma approval by the Council members. Given the increasingly personal attacks on mandate holders, this process may prove to be problematic in the future. Mandate holders are not financially compensated for their tenure despite their significant responsibilities and travel requirements, although they are provided with a limited staff and their travel expenses are reimbursed.

The efforts described above by some countries to eliminate certain special procedures or to limit their independence and effectiveness are in many ways a testament to the quality of the work of special procedures overall. While all mandate holders remain understaffed and are constrained by the willingness of governments to cooperate by extending invitations and responding to inquiries, most of the UN's 30 thematic and 8 country-specific mandates are held by professional and respected human rights experts, who produce high-quality reports and issue relevant, urgent appeals to governments. While their time in Geneva is often limited to a short period when they are due to deliver reports, mandate holders are usually generous in accommodating requests to meet with NGO delegations and human rights defenders.

The establishment of the Coordinating Committee of Special Procedures in 2005 has led to increased cooperation among mandate holders, including the convening of joint events around thematic topics, the conduct of joint missions, and the issuance of joint reports. This has been a positive development for increasing not only cooperation among the mandate holders, but also their impact in the face of pushback by certain states.

Freedom House Recommendations

- The OHCHR should be provided with additional funds to ensure sufficient and high-quality staffing for the mandates.
- The OHCHR should provide a modest honorarium for mandate holders.
- The appointment of mandate holders should be made by the President of the Council in accordance with specific criteria for qualifications. Member states should act only in an advisory capacity and should not be provided the opportunity to veto particular candidates.

Criterion 3: Adoption of Resolutions and Use of Special Sessions

Freedom House Assessment: FAIL

The Council's ability to pass strong resolutions that address either country-specific human rights violations or global human rights issues has been dismal. In the past two years, the Council has managed to issue condemnatory resolutions on just a handful of countries: Burma, the Democratic Republic of Congo, North Korea, Somalia, and Israel. Council resolutions regarding massive and ongoing human rights violations in Sudan and following the conflict in Sri Lanka were weak and in both cases actually praised governments for their actions. No resolutions were passed condemning the governments of Belarus, Chad, China, Cuba, Equatorial Guinea, Eritrea, Laos, Libya, Saudi Arabia, Syria, Turkmenistan, Uzbekistan, or Zimbabwe, which rank at the very bottom of Freedom House's list of Not Free countries and which systematically deny their citizens fundamental political rights and civil liberties.

The Council's performance with regard to special sessions remains disappointing in terms of addressing urgent human rights issues, but has decidedly improved since the first year of the Council, when three of the first four special sessions focused on Israel. Of the seven special sessions held since June 2007, two focused on Israel and the other five focused on Burma, the world food crisis, the Democratic Republic of Congo, the economic and financial crisis, and Sri Lanka. The special sessions on Burma and the Democratic Republic of Congo both resulted in strong resolutions. However, as noted above, the special session on Sri Lanka—which was called by 17 members of the Council representing all five of the UN's regional groups—ultimately failed to produce a strong resolution. The adopted resolution failed to hold the Sri Lankan government to account for human rights abuses during the conflict, nor did it put protections in place addressing issues such as the large numbers of internally displaced persons.

Positive Examples:

The Council's response to the situation in **Burma** (Myanmar) following the violence associated with the October 2007 monk demonstrations should be commended. The Council adopted two strong resolutions on Burma during the period under review (7th and 8th sessions), condemning the “ongoing systemic violations of human rights” and urging

Burma's government to cooperate with the SR, as well as to "desist from further politically motivated arrests and to release all political prisoners without delay and without conditions."

The Council's overall reaction to the situation in **Somalia** has been adequate. At the 7th and 10th sessions, it adopted resolutions that expressed serious concern over the human rights situation and called for all parties to immediately stop engaging in acts of violence. The latest resolution renewed the mandate of the independent expert through December 2009.

The Council passed resolutions at the 7th, 8th, and 10th sessions deploring the human rights situation in **North Korea**—as well as the government's refusal to recognize the mandate of the SR—and extending the mandate of the SR.

Negative Examples:

On **Darfur**, the Council attempted to take various actions—including the creation of a high-level mission to visit Sudan and later a resolution establishing an experts group of special procedures mandate holders—but these efforts were thwarted primarily by the Africa Group under Egypt's leadership. Resolutions adopted at the 6th and 7th sessions actually praised Sudan's efforts to improve the human rights situation and welcomed Sudan's collaboration with the SR. The strongest resolution, adopted at the 9th session, expressed deep concern over "serious violations of human rights law" and urged the government "to ensure that all allegations of violations of human rights and international humanitarian law are duly investigated and that the perpetrators are brought to justice," but fell short of condemning the Sudanese government. Following a heated debate at the 11th session, the Council adopted the resolution to essentially renew the mandate of the SR on Sudan in the form of an "independent expert" (see above).

In the case of **Sri Lanka**, the special session and an attempt to adopt a strong resolution were hijacked in May 2009, resulting in the adoption of a [poor resolution](#) put forth by the Sri Lankan government. The resolution assigned all blame for human rights abuses to the separatist Liberation Tigers of Tamil Eelam and emphasized the Sri Lankan government's sovereignty over the human rights needs of the Sri Lankan people.

Israel remained the target of an inordinate number of both condemnatory resolutions and special sessions. Israel was the target of 10 out of 18 condemnatory resolutions passed during the period of this report (and 19 out of 31 since the first session of the Council), the language of which is consistently one-sided, assigning sole responsibility to Israel for the violations of human rights in the Occupied Palestinian Territories. Israel was also the target of three of the four first special sessions called by the Council and was the target of two of the seven special sessions that took place during this reporting period.

The Council continued its practice of adopting annual resolutions put forward by Pakistan on behalf of the OIC on "**Combating Defamation of Religions**." Such resolutions, which have been rightly criticized by the SR on freedom of opinion and expression and

the SR on freedom of religion or belief, as well as by nongovernmental freedom of expression and religious freedom organizations, call on countries to enact legislation that prohibits anti-Islamic or “blasphemous” speech, terms that are vague and open to abuse.

Freedom House Recommendations

- Democracies must put forward and build support for resolutions that condemn the actions of governments in countries where evidence exists of systemic and widespread abuse of human rights, including Belarus, Cuba, and other countries that receive the [lowest ratings](#) for political rights and civil liberties according to *Freedom in the World*.
- Democracies that strongly protect freedom of expression should engage in a well-resourced campaign to reach out to likely allies in Latin America, Africa, and Asia so as to pass resolutions that condemn abuses of freedom of expression and to defeat future resolutions on so-called “defamation of religions.” Particular efforts should be made to engage OIC member states on this issue and differentiate between legitimate human rights issues, such as discrimination and violence, and protected rights of expression and opinion.

Criterion 5: Universal Periodic Review Process

Freedom House Assessment: MIXED

The concept of Universal Periodic Review, which subjects all members of the UN to a human rights review every four years, has merit. In practice, however, the process has proven to be deeply uneven. Because the UPR process is conducted largely by the member states in conjunction with the state under review, the legitimacy and effectiveness of the reviews depend too much on the desire of the country under review to take the process seriously.

UPR has been an effective mechanism primarily for those countries Freedom House ranks as Free—which have deficiencies, but overall strong human rights records—and for those ranked on the high end of Partly Free range—meaning they have greater restrictions on political rights and civil liberties, but generally have the political will to improve. The UPR process has required these countries to take a hard look at their deficiencies, engage in a meaningful dialog with other countries on steps for improvement, and engage with their own civil society organizations. However, the UPR process has been far less meaningful for countries with poor human rights records and with little or no political will to make improvements. Such countries, whose populations have the greatest need of international protections, have largely perverted the process by presenting unduly positive reports about their human rights situation and—as was most egregiously done in the case of Cuba and Russia—by lining up friendly countries to dominate the interactive dialog portion of the review with undeserved flattery of their human rights records.

Because the interactive dialogue portion of the review process is restricted to governments, participation by independent experts—whether from the UN system of special procedures or from outside the UN—is limited to the submission of compilation reports and to oral presentations after the outcome document has been finalized. Experts are not allowed to engage in the interactive dialogue portion of the review, but rather must rely on member and observer states to raise important issues at that time. This limitation seriously impedes the seriousness of the UPR process, and is particularly worrisome because some states have openly called for the elimination of expert special procedures on the basis that the UPR is a sufficient form of review.

The opportunity for independent stakeholders to submit five-page written reports, which are summarized by the OHCHR and compiled into a document that is considered part of the formal review process, does present a limited advocacy opportunity. The OHCHR website—which displays the full stakeholder report submissions and compilation documents, as well as the reports of the states under review, the compilation document of UN experts, and the final outcome documents—serves as an important library of human rights information on all countries to a potentially large audience.

Freedom House Recommendations

- The UPR process should be changed to allow greater involvement of independent experts, including representatives of NGOs. Representatives of the OHCHR and independent NGOs should be allowed to engage in the interactive dialogue process, and at least one independent expert should be included as a member of the “troika” selected to assist with the country reviews.
- The OHCHR should continue to post on its website all documentation submitted by states, the OHCHR, and independent stakeholders. The website should be improved to make stakeholder submissions easier to locate.
- Live webcasts of UPR sessions should be continued and prioritized despite opposition from certain member states. These webcasts allow millions of people in the countries concerned to view the proceedings and advocate for the recommended changes in their own countries.
- The Council should generate a random list of country interventions during the interactive dialog to prevent states from lining up allies to dominate the discussion.

BENCHMARK 2:

The ability of the Council to raise and take appropriate action to address emerging global patterns of human rights abuses

Criterion 1: Global Threat against Freedom of Association

Freedom House Assessment: MIXED

The right to peaceful assembly and association, enshrined in Article 20 of the UDHR and Articles 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR), has come under significant threat in the past decade. According to *Freedom in the World*, 43 countries showed a decline in their freedom of association scores between 2004 and 2007, while countries already at the bottom of the scale—such as Libya, Syria, Eritrea, and Saudi Arabia—remained deeply restrictive. In 2005 alone, the governments of Russia, Belarus, Eritrea, and Uzbekistan enacted new legislation restricting the ability of NGOs to register and function. Similar legislation was adopted in Ethiopia earlier this year and is under consideration in countries as diverse as Peru and Azerbaijan.

The UN human rights system does not maintain a mandate specifically dedicated to the protection of freedom of association, and no resolutions were passed by the Council that address the global backlash against this critical freedom. However, the work of many of the special procedures relies heavily on information from nongovernmental human rights organizations, which are themselves targeted by authoritarian states. The SR for human rights defenders, currently held by Margaret Sekaggya (Uganda) and previously held by Hina Jilani (Pakistan), has done an admirable job of reporting on and advocating for the rights of human rights defenders, including their right to engage in peaceful assembly.

Freedom House Recommendation

- The Council should adopt a resolution establishing a special rapporteur on freedom of association.

Criterion 2: Global Threat against Freedom of Expression

Freedom House Assessment: FAIL

Over the past decade, the impressive gains for freedom of expression that accompanied the end of the Cold War have experienced steady and worrying erosion. This emerging pushback against freedom of expression takes several forms. There is growing pressure on freedom of the traditional press, a phenomenon documented in Freedom House's annual *Freedom of the Press* reports, which indicate seven straight years of declines. Attacks on traditional media have been matched by government attempts to gain control over content on the internet and other new media, as well as by broader campaigns to

discourage journalists, scholars, NGOs, and others from speaking out or publishing material on so-called sensitive subjects, such as religion.

The Council has continued to renew the important mandate on **freedom of opinion and expression**, and both the current mandate holder, Frank La Rue (Guatemala), and his predecessor, Ambeyi Ligabo (Kenya), have conducted numerous country visits, issued strong, professional reports identifying threats to this fundamental freedom, and issued urgent appeals to governments on behalf of journalists and human rights defenders. A number of member states, including Canada, which traditionally served as the primary sponsor of the freedom of expression resolution, have energetically tried to counter attempts to place limitations on freedom of expression. However, they are for the most part losing this battle at the Council. At the 7th Council session in March 2008, Pakistan introduced a successful amendment to the resolution, extending the mandate that requires the SR to report on abuses of freedom of expression “amounting to religious or racial intolerance,” in addition to reporting on abuses of freedom of expression. This amendment caused Canada and other sponsoring countries to withdraw their sponsorship of the resolution. At the June 2009 session, a number of countries led by Egypt launched an attack on the SR for freedom of expression, accusing him of abusing his mandate by issuing statements that point out the incompatibility of the “defamation of religions” resolutions with freedom of expression, and by not paying enough attention to the new requirement that he report on instances of abusive speech (see above).

An additional attack on freedom of expression has come in the form of resolutions on “**Combating Defamation of Religions**,” which call on countries to enact legislation that prohibits anti-Islamic or blasphemous speech so as to combat a perceived rise in intolerance and discrimination against Muslims. Every year since 1999, Pakistan, on behalf of the OIC, has introduced these resolutions, which have passed at the Council with disturbing ease. The latest such resolution passed in March 2009, with 23 countries in favor and only 11 against, while 13 countries abstained.

Freedom House Recommendations

- Democracies that strongly protect freedom of expression should engage in a well-resourced campaign to reach out to likely allies in Latin America, Africa, and Asia to support the work of the special rapporteur and to turn back the tide on freedom of expression votes.
- Particular efforts should be made to engage OIC member states on freedom of expression and to differentiate between legitimate human rights issues, such as discrimination and violence, and protected rights of expression and opinion.

BENCHMARK 3: The ability of nongovernmental stakeholders to engage with the Council

Criterion 1: Accreditation Process for NGOs

Freedom House Assessment: MIXED

The rules according to which nongovernmental organizations engage with the UN Human Rights Council and other human rights mechanisms of the UN are spelled out in [UN ECOSOC Resolution 1996/31](#). The main criterion for NGOs to receive UN accreditation is that their work is of direct relevance to the aims and purposes of the United Nations. The resolution further states that consultative relationships should be guided by the principle of “securing expert information or advice” and should “enable organizations that represent important elements of public opinion to express their views.”

A Committee on Non-Governmental Organizations (hereafter referred to as the NGO Committee) is tasked with overseeing the accreditation process by reviewing NGO applications and making recommendations to the full Economic and Social Council (ECOSOC), a body comprised of 54 UN member states, which then votes to approve or reject the applications. The composition of the NGO Committee, which consists of 19 UN member states, indicates the degree to which repressive countries are outpacing democracies when it comes to influencing the Council. Not Free countries occupy the same number of seats (eight) on the Committee as Free countries, with the remaining three seats occupied by Partly Free countries. Moreover, the roster of Not Free and Partly Free countries include some of the world’s most aggressive opponents of universal standards on human rights: China, Cuba, Egypt, Pakistan, Russia, and Sudan.

Composition of Committee on Non-Governmental Organizations			
	Free	Partly Free	Not Free
Western Europe and Other (4 Seats)	Israel, United Kingdom, United States	Turkey	-----
Eastern Europe (2 Seats)	Romania	-----	Russia
Africa (4 Seats)	-----	Burundi	Angola, Sudan, Guinea
Asia (5 Seats)	India	Pakistan	China, Egypt, Qatar
Latin America (4 Seats)	Colombia, Dominica, Peru	-----	Cuba
Total (19 seats)	8 Free countries (42%)	3 Partly Free countries (16%)	8 Not Free countries (42%)

These countries increasingly attempt to influence the ability of NGOs to engage with the Council by denying accreditation to organizations that they view as too critical of their human rights records or that advocate on behalf of issues to which they are opposed.

They subject targeted candidates to a lengthy, repetitive, and intrusive inquiry process designed not to determine whether the candidates' work fits the aims and purposes of the UN, but rather to reveal so-called bias or "politicization" on the part of the NGO in question. Organizations likely to face such scrutiny include those that criticize certain countries more than others or operate without the endorsement of the government in their home country. Such targeting of NGOs is counterintuitive to the purpose of civil society engagement in UN human rights mechanisms, which is to provide information that is independent of governments and which should logically reflect each individual organization's thematic or country priorities. Moreover, these countries put tremendous pressure on other members of the Committee to vote with them. At least one of the Latin American countries has expressed doubts about running for another term on the Committee during the next elections in 2011, which may very well result in a worsening of the composition of the NGO Committee from a human rights perspective.

At the most recent session of ECOSOC in July 2009, the full Council voted on the NGO Committee's recommendations to deny accreditation to or suspend the status of four NGOs. In an unusual departure from the NGO Committee's recommendations, ECOSOC members voted to reject the recommendations of the Committee (thereby granting accreditation) in the case of two organizations: an American democracy promotion organization² and a Brazilian organization that promotes the rights of homosexuals.³ In both cases, the organizations engaged in extensive advocacy toward ECOSOC member states and the governments of their countries pushed strongly for their accreditation. However, the NGO Committee's recommendation to suspend the ECOSOC status of the Arab Commission for Human Rights was upheld, as was the recommendation to deny accreditation to the Dynamic Christian World Mission Foundation. In the case of the Arab Commission for Human Rights, the decision to suspend was based on a spurious accusation by Algeria that the organization had allowed a "terrorist"⁴ to speak on its behalf during the adoption of the Algeria UPR report. The Dynamic Christian World Mission Foundation was rejected for refusing to divulge a list of its Chinese members to the Chinese government.

Freedom House Recommendations

- Democracies must run for seats on the Committee and invest diplomatic resources to combat the efforts of repressive states.
- Ultimately, the UN should replace the NGO Committee as a political body with a professional bureau that will evaluate the applications of NGOs on a purely technical basis.

² The Democracy Coalition Project

³ Associação Brasileira de Gays, Lésbicas e Transgêneros (ABGLT)

⁴ The speaker was Rashid Mesli, an Algerian lawyer and human rights activist, who has lived in Switzerland in political exile since he fled Algeria in 2000.

Criterion 2: Opportunities for NGO Engagement at the Council

Freedom House Assessment: MIXED

There are significant opportunities for nongovernmental organizations to engage with and seek to influence the Council, particularly for organizations that have managed to obtain ECOSOC status. These organizations can attend sessions of the Council in Geneva, submit written statements pertaining to the items on the agenda, present oral statements during the interactive dialog segments of the agenda, conduct press conferences and side-panel events on the premises of the Council, meet with country missions and UN special procedures, and bring human rights defenders from anywhere in the world under their own accreditation to attend Council sessions in Geneva. In addition, all NGOs, regardless of whether they maintain ECOSOC status, can submit reports on the human rights situation in individual countries as part of the UPR process. These reports are posted in full on the website of the OHCHR, and sections of their reports may be cited in the stakeholder compilation document assembled by OHCHR staff for the formal UPR review. Overall, official NGO participation at the Council is higher than the level that existed with the UN Commission on Human Rights.

Nonetheless, there remain several obstacles for NGO participation at the Council. The primary obstacle is simply a lack of resources for NGOs to either maintain offices in Geneva or to send delegations to Council sessions. Geneva is an extremely expensive city (it ranked as the fourth most expensive city in the world according to the Mercer's 2009 Worldwide Cost of Living survey), and very few organizations can either maintain an on-the-ground presence in Geneva or even manage to send a delegation once a year. Groups that are not based in Geneva are at a distinct disadvantage to Geneva-based groups in terms of tackling the necessary bureaucratic hurdles entailed in getting badges, reserving rooms for panel events, signing up for oral interventions, and arranging meetings with special rapporteurs, who typically are only in Geneva for a small number of days each year when they are scheduled to deliver reports. Because the Council is now practically in permanent session—with regular, special, and UPR sessions—NGOs outside Geneva have difficulty determining when to send a delegation. Once in Geneva, they struggle to ensure that they can stay long enough to address a particular agenda item, because the Council's agenda almost always falls behind schedule.

Another obstacle comes in the form of anti-NGO behavior on the part of certain member states. Not surprisingly, states with poor human rights records generally do not support the rights of NGOs to report on their bad behavior and therefore attempt to impede the work of NGOs. They do this by repeatedly interrupting the oral interventions of NGOs with points of order, by creating their own government-organized “nongovernmental” organizations (GONGOs) to monopolize the speaking time allotted for NGOs, and by accusing NGOs of procedural misconduct. As was noted above, these states also make it a high priority to get elected to the NGO Committee, which oversees the NGO accreditation process.

Finally, despite the opportunity to submit stakeholder reports, the ability of NGOs to engage throughout the UPR process is quite limited. As was noted above, NGOs do not have the ability to present questions or make statements during the interactive dialog portion of the review.

Freedom House Recommendations

- The President of the Council must limit the ability of states to interrupt and harass NGOs during oral interventions. States should be repeatedly reminded of the importance of civil society participation in the functioning of the Council.
- UN member states, and particularly Switzerland as the host country of the Council, should create a fund to provide resources that enable more NGOs to access the Council. Such a fund could provide travel grants for NGOs to attend sessions and subsidize hotels in Geneva to provide discounted rates for NGOs during Council sessions.
- The Human Rights Council should follow the example of ECOSOC and hold some of its regular and special sessions in New York, where all UN states maintain missions, thereby decreasing travel costs for NGOs in the Western Hemisphere.
- The UPR process should be changed to allow greater involvement of independent experts, including representatives of NGOs. Representatives of the OHCHR and independent NGOs should be allowed to engage in the interactive dialog process, and at least one independent expert should be included as a member of the “troika” selected to assist with the country reviews.

BENCHMARK 4: Democracies play a leadership role in ensuring that the Council lives up to its mandate

Criterion 1: Voting Records of Democracies during Council Elections

Freedom House Assessment: FAIL

One way that the Human Rights Council was to be improved over the Commission on Human Rights was through a better system of elections, which would help ensure that countries genuinely dedicated to the promotion of human rights populated the Council, or at the very least, ensure that some of the world’s worst human rights abusers did not. Under the new system, Council members are elected by the full General Assembly through a secret ballot, with the 47 available seats divided among the five regional groups of states on a proportional basis as follows: Africa, 13 seats; Asia, 13 seats; Eastern Europe, 6 seats; Latin America and Caribbean, 8 seats; and Western Europe and Other Group,⁵ 7 seats.

⁵ The Western European and Other Group includes all countries of Western Europe, as well as Australia, Canada, New Zealand, and the United States.

To obtain a seat on the Council, candidates must receive an absolute majority of votes (97 of 192 votes). Resolution 60/251, which created the Council, does not provide specific criteria for membership, but rather provides guidance that instructs General Assembly members to “take into account the candidates’ contribution to the promotion and protection of human rights and their voluntary pledges and commitments made thereto” when electing Council members. The resolution also states that consideration ought to be given to whether the candidate can meet the obligations of Council membership, including whether they can (a) “uphold the highest standards in the promotion and protection of human rights” and (b) “fully cooperate with the Council.”

Sadly, elections to the Human Rights Council have proven to be disappointing affairs. Most of the five regional groups decide in advance which countries should represent them on the Council, with little regard for the human rights records of those countries, and then put forward “clean slates” (the same number of candidates as seats available). General Assembly members have played along with this game, demonstrating an unwillingness to put human rights considerations ahead of the fear of losing political points by denying abusive countries the needed votes to pass the 50 percent threshold. At the last elections to the Human Rights Council, all three of the candidates that Freedom House includes in its list of the “World’s Most Repressive Societies”—China, Cuba, and Saudi Arabia—were easily reelected to the Council with 167, 163, and 154 votes respectively. This means that of the 192 UN member states, only 25 countries questioned China’s ability to uphold the highest standards in the promotion and protection of human rights. Only 29 states withheld their votes from Cuba, and only 38 from Saudi Arabia.

While the ballots are secret, the process of elimination reveals that at least 93 of the 118 UN member countries⁶ that Freedom House designates as [electoral democracies](#) saw fit to vote for China, while 89 voted for Cuba and at least 80 voted for Saudi Arabia. Other countries with poor domestic human rights records, including Russia, Cameroon, and Djibouti, were also elected with a considerable number of votes from electoral democracies.

Freedom House Recommendations

- Democracies must invest the resources necessary to run for seats on the Council.
- Democracies must commit themselves to upholding the spirit of elections to the Human Rights Council by voting only for those countries that seek to uphold human rights at home and at the UN.
- The Community of Democracies should create a fund that provides financial resources to allow poor democracies with strong human rights records to maintain a diplomatic presence in Geneva and run for seats on the Council.
- The Human Rights Council should follow the example of ECOSOC and hold some of its regular and special sessions in New York, where all UN states maintain missions.

⁶ Freedom House’s list of “electoral democracies” also includes Taiwan, which is not a UN member country.

Criterion 2: Voting Records of Democracies on Key Human Rights Resolutions or Decisions

Freedom House Assessment: FAIL

A Freedom House analysis of selected resolutions or decisions that clearly advance or reverse fundamental human rights indicates that many countries with respectable domestic human rights records are nonetheless willing to ignore the cause of human rights when it comes to voting at the Human Rights Council. In essence, too many of the world's democracies—particularly in Africa, Asia, and Latin America—follow the lead of highly repressive countries like Egypt, China, and Cuba. These authoritarian states invest tremendous energy and resources in the Council and exert strong political pressure on other countries in their regions or spheres of influence.

The willingness of other democracies to follow their lead stems from a variety of reasons, including a false sense of solidarity with other countries considered to be in the developing “Global South” or non-Western sphere of influence. These countries also side with repressive regimes due to pragmatic considerations, such as a fear of negative political or economic consequences for breaking ranks, or a simple lack of resources to fully focus on the issues brought before the Council. The result is that Free countries like India, Indonesia, and South Africa consistently vote in a manner that indicates they do not believe the Council should hold other countries to account for their human rights records. Other Free countries like Japan, South Korea, and Brazil have abstained on important votes in which a yes or no vote should have been an obvious choice. Other electoral democracies in these regions have mixed records, occasionally going against the leadership of regional blocs either on principle or as a result of strong advocacy from other democracies or NGOs. A notable example of this is the decision by Mauritius, Uganda, and Zambia to vote in favor of the Sudan resolution at the last Council session, thereby preventing a “bloc” vote on behalf of the Africa group. Ghana, Nigeria, and Senegal also helpfully abstained from the vote, allowing for the resolution's passage.

The latest resolution put forward by Pakistan on behalf of the OIC that calls on countries to enact legislation prohibiting so-called **Defamation of Religions** ([A/HRC/RES/10/22](#)) was adopted by the Council at the 11th session by a vote of 23 to 11, with 13 abstentions. The following six countries that qualify as electoral democracies all voted in favor of the resolution, despite its clear contradiction with fundamental freedoms of expression and religion: Bangladesh, Bolivia, Indonesia, the Philippines, Senegal, and South Africa. An additional 12 electoral democracies abstained on the vote, resulting in the resolution's easy passage: Argentina, Brazil, Bosnia and Herzegovina, Ghana, India, Japan, Madagascar, Mauritius, Mexico, South Korea, Uruguay, and Zambia.

The shameful resolution on **Sri Lanka** ([A/HRC/S-11/1](#)) adopted at the 11th special session in May 2009 passed with a vote of 29 to 12, with 6 abstentions. Bangladesh, Bolivia, Brazil, Ghana, India, Indonesia, Nicaragua, the Philippines, Senegal, South

Africa, Uruguay, and Zambia all qualify as electoral democracies and voted in favor of the resolution. Argentina, Japan, Mauritius, South Korea, and Ukraine all abstained.

The resolution to create a new **Sudan** mandate ([A/HRC/RES/11/10](#)) was adopted at the Council's 11th session, by a vote of 20 to 18, with 9 abstentions, in June 2009 despite votes against the resolution by Bangladesh, Indonesia, the Philippines, and South Africa. Bolivia, Ghana, India, Nicaragua, and Senegal all abstained.

A total of eight electoral democracies voted in favor of the amendment put forward by Pakistan on behalf of the OIC to alter the **Freedom of Expression** mandate, requiring the special rapporteur to report on abuses of freedom of expression "amounting to religious or racial intolerance": Bangladesh, Ghana, Indonesia, Madagascar, Mauritius, Senegal, South Africa, and Zambia. Two Free electoral democracies, Japan and South Korea, abstained.

Even in the case of the resolution on **North Korea** ([A/HRC/RES/10/16](#)), which passed with relative ease, a surprising number of democracies chose to either vote against the resolution or to abstain. Indonesia joined such rights-abusing countries as China, Cuba, Egypt, and Russia in voting against the resolution. Brazil, India, Nicaragua, the Philippines, Senegal, and South Africa all abstained on the vote.

Freedom House Recommendations

- Democracies must demonstrate their commitment to human rights by voting for resolutions that hold governments to account in cases where evidence exists of systemic and widespread abuse of human rights.
- Democracies must work across regional groups to break the system of bloc voting and to convince countries to vote according to human rights concerns.

BENCHMARK 5:
Efforts by the U.S. government to positively affect
the Council's functioning

Criterion 1: Level of U.S Government Engagement at the Council

Freedom House Assessment: MIXED

During the years of the Bush administration, the United States did not run for a seat on the Human Rights Council, marking a change in a firm commitment to the UN and human rights in U.S. policy that dated back to the establishment in 1946 of the Council's predecessor, the UN Commission on Human Rights. Disappointed by the outcome of the decision regarding the structure of the Council in replacing the Commission, the Bush administration determined that it was not worth the investment of resources necessary to

sit on the Council, unless the Council first proved it would be an improvement over the Commission. Thus, during most of the Bush administration, the United States maintained status only as an observer at the Council. This meant that the staff of the U.S. Embassy in Geneva was able to be active in behind-the-scenes discussions and meetings and in plenary sessions, but lacked support at the highest political levels in Washington. This changed abruptly in June 2008, when the United States suddenly announced that it would no longer participate as an active observer on the Council, and Washington informed the U.S. mission to the UN in Geneva to cease activities both behind the scenes and during interactive dialogs at the plenary sessions, unless specifically authorized.

The Obama administration would ultimately reverse the Bush administration policy, seeking and winning a seat on the Council in May 2009. However, in the months before that decision was announced in March 2009, the U.S. staff in Geneva was instructed to maintain its inactive observer status. As a result, the United States missed important opportunities to engage in significant Council activities, including the UPR sessions of China, Cuba, Russia, and Saudi Arabia. While the United States is one of the few countries at the Council with the political clout to pose tough questions or recommendations to these powerful countries, the U.S. voice in the plenary room was silent.

Due to the membership structure of the Council, the United States essentially replaces Canada, a country with a very strong voting record, as one of the seven WEOG states.⁷ Thus, the presence of the United States on the Council is less important for its vote on key resolutions or decisions than it is for the significant political resources the country can bring to bear by tabling important resolutions and securing the support of non-WEOG countries on such initiatives if it chooses to do so, as well as by calling for recorded votes and introducing key amendments from the floor. Moreover, the presence of the United States on the Council provides it with an important opportunity to push for changes that could positively affect the Council's functioning during the scheduled five-year review of the Council in 2011. The United States stands a much greater chance of exerting a positive influence on this review if it is seen as an active player and has done the diplomatic heavy lifting to secure alliances among other UN states.

The United States is facing a considerable challenge even if the administration is genuinely committed to turning the performance of the Council around. It will need an ambassador who has a combination of diplomatic experience, human rights commitment, and political clout to build allies and start changing the culture of the Council. Unfortunately, the United States has lost valuable time as well as valuable resources in Geneva. The previous U.S. ambassador stepped down at the beginning of the year, and a new ambassador had yet to be named at the writing of this report. It is still unclear whether the United States will appoint a single permanent representative for Geneva, who will also cover the Council, or whether it will take the important step of appointing an ambassador exclusively for the Human Rights Council (as it does for the World Trade

⁷ As previously noted, seats on the 47-member Council are distributed as follows: African states, 13 seats; Asian states, 13 seats; Eastern European states, 6 seats; Latin America and Caribbean states, 8 seats; and Western Europe and Other Group of states, 7 seats.

Organization, also based in Geneva). The deputy permanent representative departed in July and has been replaced by a diplomat with experience largely in economic development and trade. The United States will not have an ambassador or senior human rights appointee from the mission in place before the start of the first Council session at which it is a full member on September 14.

Nonetheless, the United States has already scored a meaningful victory at the 11th session of the Council in June 2009, when it played an important role in securing the passage of the resolution to extend a mandate for the Sudan. The resolution, which passed by a slim margin (20 in favor, 18 against, 9 abstentions), demonstrated that the Council is capable of acting in the interests of human rights when democracies put in real resources. The United States must build on this success starting in September, helping to ensure the ongoing independence of special procedures, putting forward country-specific resolutions, defending key thematic priorities such as freedom of expression and freedom of association, and advancing the participation of civil society at the Council.

Freedom House Recommendations:

- The United States should appoint an ambassador devoted exclusively to the Human Rights Council with an extensive background in both human rights and diplomacy. This ambassador should have the necessary resources and mandate to travel and visit capitals, where many of the important decisions at the Council are made.
- The United States should enhance the staffing—in Geneva, Washington, and New York—for the Human Rights Council and related initiatives. The Council is now a year-round body, and decisions, planning, and follow through will require far more attention than was paid during the years of the defunct six-week-a-year Commission on Human Rights.
- The United States should maintain a careful balance between playing a leadership role in promoting thematic and country-specific human rights priorities and demonstrating a willingness to compromise and work with other members of the Council to ensure a more credible, professional, and effective body.
- The United States should join the group of 65 countries that have issued standing invitations to the special procedures mandate holders, demonstrating that it fully supports the Council's most effective mechanism and is open to investigation into its own human rights record.
- The United States should set a positive example during its upcoming UPR review, engaging fully with civil society, thoroughly addressing its human rights shortcomings in its report, and demonstrating a willingness to act upon the recommendations that emerge from it.

Appendix: 2009 UN Human Rights Council Membership
Freedom in the World Ratings

FREE (23 COUNTRIES, 49%)

Term Expires 2010

India (2,3) **
Indonesia (2,3) *
Italy (1,2) **
Netherlands (1,1) *
Slovenia (1,1) *
South Africa (2,2) **

Term Expires 2011

Argentina (2,2) *
Brazil (2,2) *
Chile (1,1) **
France (1,1) *
Ghana (1,2) *
Japan (1,2) *
Slovakia (1,1) *
South Korea (1,2) **
United Kingdom (1,1) *
Ukraine (3,2) *

Term Expires 2012

Belgium (1,1) *
Hungary (1,1) *
Mauritius (1,2) *
Mexico (2,3) **
Norway (1,1) *
Uruguay (1,1) *
United States (1,1) **

PARTLY FREE (16 COUNTRIES, 34%)

Term Expires 2010

Bolivia (3,3) †*
Bosnia-Herzegovina (4,3) *
Madagascar (4,3) †
Nicaragua (4,3) †
Philippines* (4,3) †*

Term Expires 2011

Bahrain (5,5) † ‡*
Burkina Faso (5,3) † ‡
Gabon (6,4) † ‡
Pakistan (4,5) † ‡
Zambia (3,3) †

Term Expires 2012

Bangladesh (4,4) † ‡*
Djibouti (5,5) † ‡
Jordan (5,5) † ‡*
Kyrgyzstan (5,4) ‡
Nigeria (5,4) † ‡
Senegal (3,3) † ‡*

NOT FREE (8 COUNTRIES, 17%)

Term Expires 2010

Angola (6,5) †*
Egypt (6,5) † ‡
Qatar (6,5) † ‡

Term Expires 2011

None

Term Expires 2012

Cameroon (6,6) † ‡
China (7,6)
Cuba (7,6) †
Russian Federation (6,5)
Saudi Arabia (7,6) † ‡

(Political Rights Score, Civil Liberties Score) according to *Freedom in the World* 1=Best, 7=Worst

* Community of Democracies Member

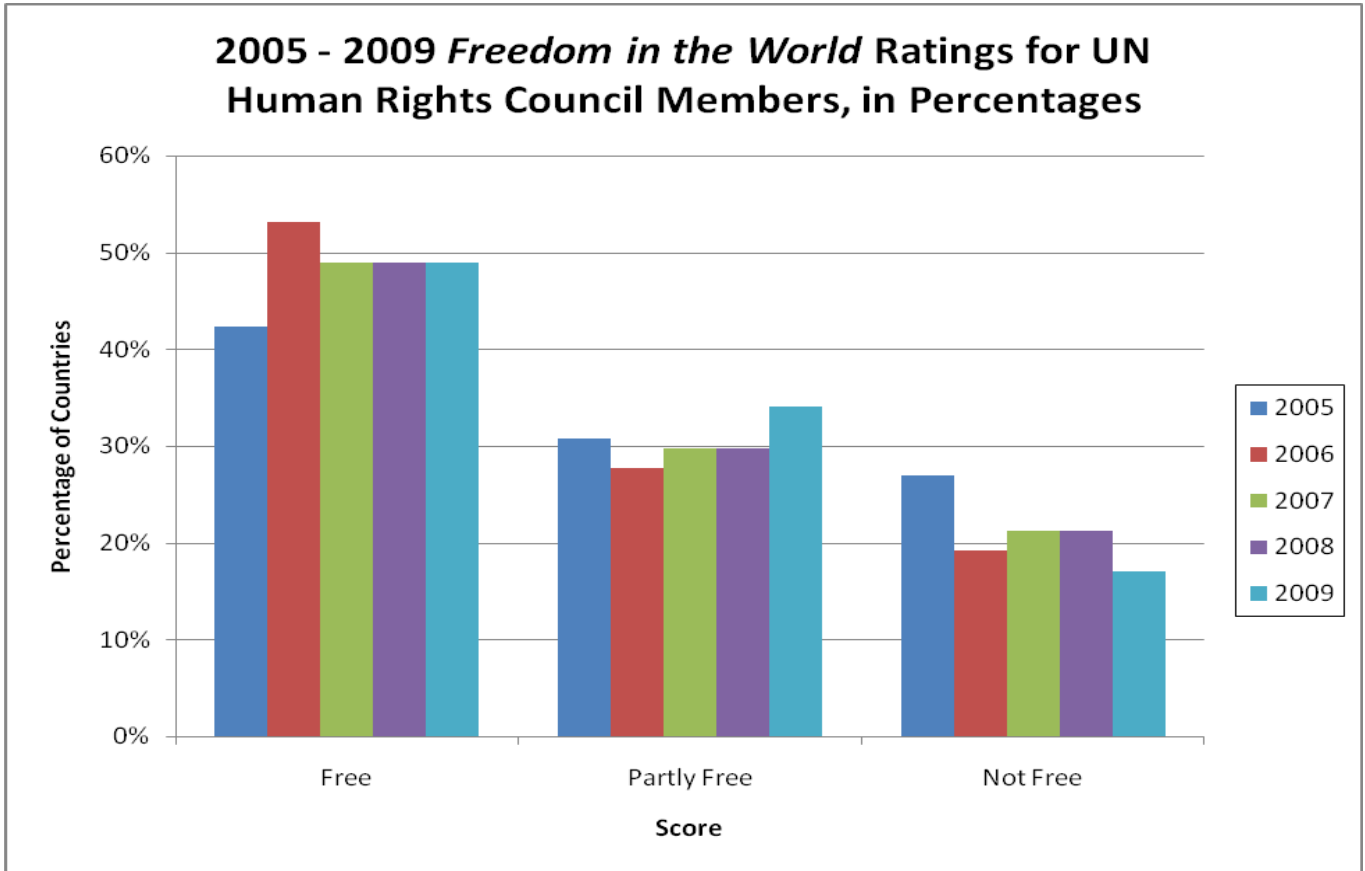
** Community of Democracies Convening Group Member

† Non-aligned Movement Member

‡ Organization of the Islamic Conference Member

(Updated July 28, 2009)

Appendix: 2009 UN Human Rights Council Membership
Freedom in the World Ratings



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