The Permanent Missions of Argentina, Brazil, Chile, Colombia, Costa Rica, El Salvador, Mexico and Uruguay present their compliments to all Permanent Missions to the United Nations and have the honor to circulate an explanatory note on amendment L.52 to draft resolution A/C.3/71/L.46 on the report of the Human Rights Council, to be considered by the Third Committee.

The Permanent Missions of Argentina, Brazil, Chile, Colombia, Costa Rica, El Salvador, Mexico and Uruguay avail themselves of the opportunity to renew to all permanent missions to the United Nations the assurances of their highest consideration.

New York, November 15th 2016
Note on amendment L.52 introduced to draft resolution L.46 on the Report of the Human Rights Council

The Permanent Missions of Argentina, Brazil, Chile, Colombia, Costa Rica, El Salvador, Mexico and Uruguay to the United Nations seek your urgent support to preserve the ability of the Human Rights Council to function.

Draft resolution L.46 on the Human Rights Council report includes additional language deferring the consideration of and action on Human Rights Council Resolution 32/2, by objecting to the legal basis for the creation of an Independent Expert, despite the fact that the mandate had been established in accordance with rules of procedure.

Regrettably, since no informal consultations were convened, our governments, as main sponsors of resolution 32/2 at the Human Rights Council, introduced amendment L.52 requesting deletion of OP2 from draft resolution L.46. The OP2 of the draft resolution L.46 as proposed states:

| OP2 Decides to defer consideration of and action on Human Rights Council resolution 32/2 of 30 June 2016 on protection against violence and discrimination based on sexual orientation and gender identity, in order to allow time for further consultations to determine the legal basis upon which the mandate of the special procedure established therein will be defined; |

The seriousness of the consequences that OP2 would engender lies in the fact that never before has a country or group of countries attempted to challenge a special procedures mandate by the Human Rights Council with an appointed and fully functioning mandate holder.

Our countries believe that OP2 would undermine the independence and integrity of the Human Rights Council and weakens the United Nations Human Rights system in numerous ways.

The role of the Council, as the main United Nations body for dealing with human rights issues, is clearly articulated in its founding documents: General Assembly resolution 60/251 and Human Rights Council resolution 5/1. In particular, General Assembly resolution 60/251 states that the Council is “responsible for promoting universal protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner”.

Every year, after extensive deliberation, debate and substantive negotiations, the Human Rights Council adopts numerous resolutions, mandating panels, reports, special procedures and other mechanisms. If the General Assembly reopens the Council’s annual report and use a selective approach to which resolution it seeks to block or defer indefinitely it would fundamentally undermine the authority granted to the Council by the General Assembly, thus having far reaching implications well beyond the specific resolution under consideration.
This is not the first time a special procedure mandate has been created through a voted resolution in the Human Rights Council. Several mandates faced opposition in the Council prior to establishment. It is however the first time that an attempt has been made to re-litigate in the Third Committee a mandate created by a valid, adopted resolution of the Human Right Council. If it succeeds, nothing would prevent countries from targeting other existing mandate holders or mechanisms related to other sensitive issues.

GA resolution 60/251 provides the legal basis for the Council to address any human rights issue, including protection against violence and discrimination of any kind.

An explicit treaty-based definition of the issue to be considered is not a requirement for a mandate to be established by the Human Rights Council. There are over a dozen current mandates of the Council that may be considered to fall under such a category, some of which were adopted by voted resolutions. Therefore, the Human Rights Council can decide to use the special procedures mechanism to address discrimination against individuals on particular bases, even if those bases are not expressly referred to in an international human rights treaty, as it has done in the cases of albinism, minorities, internally displaced persons, and others.

The Independent Expert of Res 32/2 HRC has already commenced his work

Following the adoption of resolution 32/2, an open call for applications was publicly made on the website of the Office of the High Commissioner for Human Rights. A total of 21 individuals applied for the position. The Consultative Group of the Human Rights Council, composed of one country representative per region interviewed shortlisted candidates and submitted the top three candidates who met the general criteria and possessed the highest qualification for the mandate.

Based on this list, and after consultations with regional groups, the President of the Council chose to appoint the first choice of the Consultative Group: Vitit Muntarbhorn from Thailand. In accordance with the rules of procedure, the proposal was presented to the Human Rights Council by formal communication 31 days before the scheduled appointment date. The Human Rights Council endorsed the choice of the President at its 33rd session, in September 2016.

No state formally objected to his appointment in the Council. Some countries voiced their intention not to cooperate with the Independent Expert. Following the appointment by the Council, Vitit Muntarbhorn has already commenced his work as Independent Expert.

There are some key differences between resolution 32/2 and resolutions 1/2 and 24/24, invoked as precedents by the proponents of L.46. HRC resolution 1/2 recommended to

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1 Russia and Saudi Arabia (on behalf of OIC, except Albania) made statements expressing their non-cooperation with this mandate, and refusal to engage in any way with the Independent Expert
the General Assembly the adoption of a draft resolution; therefore it was the Council itself that refer the Declaration on the rights of indigenous peoples for consideration of the General Assembly. HRC 24/24 created a focal point for the issue of reprisals, recommending to the General Assembly the involvement of the Office of the Secretary-General and other bodies. HRC resolution 32/2 is squarely about the appointment of a special procedures mandate holder, an issue completely under the purview of the Council itself.

Resolution 32/2 does not create new rights.

Resolution 32/2 was adopted by the Human Rights Council in June 2016 to establish a mandate for an Independent Expert on protection against violence and discrimination based on sexual orientation and/or gender identity. The resolution was adopted after several preparatory informal meetings, four hours of discussions at the Council and the defeat of a no action motion.

Resolution 32/2 of the Human Rights Council reaffirms that all human beings are born free and equal in dignity and rights. While deploring violence on the basis of sexual orientation and/or gender identity, Res 32/2 focuses on the creation of a mechanism whose first task is to assess the implementation of existing international human rights instruments, while identifying both best practices and gaps.

It should also be noted that Resolution 32/2 incorporated several amendments addressing the concerns of Member States. In particular, our countries would like to highlight PP8 and PP11 of Resolution 32/2:

**PP8 Underlining the fundamental importance of respecting relevant domestic debates at the national level on matters associated with historical, cultural, social and religious sensitivities;**

**PP11 Underlining that the present resolution should be implemented while ensuring respect for the sovereign right of each country as well as its national law, development priorities, the various religious and ethical values and cultural backgrounds of its people, and should also be in full conformity with universally recognized international human rights;**

In this vein, our countries believe that it is in the common interest of all States to protect the integrity and effectiveness of the human rights system, and in this regard, we are grateful for the support received to the amendment, co-sponsored, to this date, by 56 countries.

For all the above-mentioned reasons and considerations, the Delegations of Argentina, Brazil, Chile, Colombia, Costa Rica, El Salvador, Mexico and Uruguay seek your support to the amendment L.52 by co-sponsoring and voting in favor of the amendment.