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Abstract

This research studies, from a comparative perspective and with a particular reference to the French bicentennial bicameral experience, the causes that led to the abolition of the parliamentary upper chambers in Egypt and Tunisia. Though both countries opted for the same unicameral choice in their current constitutions, adopted in 2014, the sociopolitical outcomes of such a choice are not the same. Actually, the unicameral Tunisian parliament seems better adapted to the sociopolitical context, while Egypt hassubstituted an inefficient bicameralism with an inadequate unicameralism.

Keywords: bicameralism, unicameralism, legitimacy, performance, sociopolitical context, adequacy

ملخص

هذا البحث يدرس ،من منظور مقارن وبإشارة خاصة إلى تجربة نظام الغرفتينفي فرنسا لمدة أكثر من قرنين، الأسباب التي أدت إلى إلغاء الغرفتين البرلمانيتين العليتين في مصر وتونس. لقد اختار كلا من البلدين نظام المجلس الواحد في دستوريهما الحاليين ، الذين اعتمدا في عام 2014 ، لكن النتائج الاجتماعية والسياسية لمثل هذا الخيار ليست نفسها إذ أن البرلمان التونسي أحادي الغرفة يبدو أكثر تكيفًا مع السياق الاجتماعي السياسي ، في حين أنه يلاحظ أن مصر قد استبدلت نظام مجلسين غير فعالبنظام مجلس واحد غير كافي.

الكلمات المفتاحية: نظام المجلسين، نظام المجلس الواحد ،المشروعية ، الفعالية، السياق الاجتماعي السياسي ، الملاءمة

1. Introduction

The popular uprisings that began in Tunisia at the end of 2010, spread to other Arab countries and generated differential sociopolitical outcomes in the region, ranging from constitutional reforms (as happened in Mauritania, Morocco and Algeria) to civil wars (as it is the case in Syria and Yemen), depending on many reasons, notably, the 'distance' between the government and the people.

Constitutional revision can be a means to maintain a fair balance between governmental authority and the freedom of the people in order to prevent violent struggle for power. To this end, constitutional reformation should be adapted to the particular context of each society in order not to cause more harm than good to political life. For instance, Egypt and Tunisia are, demographically and geographically, different, but both adopted bicameralism in, respectively, 1980 and 2002, after the fashion of the French model that evolved in a very different context. In 2011, Tunisians and Egyptians succeeded to overthrow their Presidents of the Republic and, subsequently, engaged reforms, crowned by the adoption of new constitutions. Among other similar measures to break up with their defunct regimes, both countries renounced bicameralism in their current constitutions, adopted in January, 2014.

The aim of the research is to show that identical constitutional choices, based on similar leitmotifs, might generate differential sociopolitical outcomes, according to the specificity of each context. Therefore, this paper inquires whether the abolition of the second parliamentary chamber in Tunisia and Egypt fall within a salutary 'rapprochement' between the government and the people or should it be perceived as a democratic set-back?

Thisresearch attempts, in a historical comparative perspective, to contrast the bicameral experiences in Egypt and Tunisia to assess the justifications underlying the abolition of the second parliamentary chambers in these countries, taking into account the influence of the French tradition on both.

The composition and the prerogatives of the former Egyptian and Tunisian upper chambers, compared to the French Senate, will shed light on their respective bases of legitimacy and their roles and, eventually, on the adequacy of the constitutional reforms pertaining to the abolition of the Tunisian 'Chamber of Councilors' (Majlis Al-Mustasharin) and the Egyptian 'Consultative Council' (Majlis A-Shura).

Consequently, this paper will be structured, according to the paradigm 'legitimacy-performance', around the following points:

- 2. The French Senate as a reference model for Arab and African countries
- 3. The Foundations of the former Tunisian Majlis Al-Mustasharin and the Egyptian Majlis A-Shura

2. The French Senate as a reference model for Arab and African countries

In the European context, there exists highly decentralized States, such as Spain or Italy, that can be taken as models of bicameral countries where the upper house has been consolidated over time, in response to the evolution of its sub-state territorial entities' autonomy (Gelard, 2008). Nonetheless, the choice of the French bicameral experience is inherent, on the one hand, to the fact that the Senate is deep-seated in

the French political system and, on the other hand, to the influence of this bicameral experience, emulated and followed by many African and Arab countries.

In Spain and Italy, for example, there is no great difference between the two chambers of parliament because the modes of election of the second chambers in Italy¹ and Spain makes them almost duplicates of the lower house, which renders the reason of bicameralism in these two countries unclear. However, no one would consider the French Senate as a copy of the lower house (*L'AssembléeNationale*).

M. PRELOT considers that the French Senate is intimately interrelated with the existence and well-being of the Republic; his words in this respect are very expressive: 'In France, when the Senate is weak, the Republic is weak. When the Senate is strong, the Republic is strong. When there is no Senate, there is no Republic (Gelard, 2008)'.Hence, a brief historical overview on the evolution of the French Senate'sbases of legitimacy (A) and its actual position in the French Political system(B) would be very useful to highlight its originality in the representation of the French society from a particular perspective.

A. The Evolution of thebases of legitimacy of the French Senate

The present position of the French Senate is a culmination of several decades of evolution. Over time, The Senate has been able to adapt to its socio-political environment in order to distinguish and consolidate its bases of legitimacy and its role. This is why the French bicameral experience is perceived as a model for many countries, especially francophone Africa and the Arab world.

The second parliamentary chamber in France was established by the Constitution of the Year III under the name of the Council of Elders (*Conseil des Anciens*), whose role was to approve or reject the

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laws which the First Chamber, the Council of Five Hundred (*Conseil des Cinq-Cents*),proposed². This second chamber finds its inspiration in the House of Lords in Great Britain, which has, for a long time, exercised a certain control over the political action of the Monarch and his/her Prime Minister with the House of Commons³.

After a period of hesitation between monarchism and republicanism, the constitutional laws of 1875 marked the birth of the Senate, which became the centerpiece of the compromise between monarchists and republicans(Belgacem, 2009). Some constitutionalists draw attention to the municipality (commune), as a basic territorial unit and a sociological reality, on the basis of which the Senate of this period (1873-1875) was edified (Duprat, 2009). The communes provided the Senate with bases of legitimacy that are different from those of the lower chamber. Indeed, more than seven decades before, General C. DE GAULE, in his speech, delivered in June 1946, focused on the existence of a Senate elected by representatives of local authorities. He particularly pointed out that the great trends of general policy are naturally reproduced in the lower chamber, local life, too, has its tendencies and rights that should be reproduced in the Senate (De Gaule, 1970).

L. FAVOREU, president of the French Association of Constitutionalists (AFC), believes that the French bicameralism is original and serves, to some extent, as a model, due to the idea of representation of local life in the upper chamber in addition to the representation of the whole people as individuals in the lower house; in his own words: 'There is a representation of the cantons at the departmental level, of departments at the regional level and of all local authorities at a national level by the Senate' (Association Française des Constitutionnalistes, 1995).

However, it must be emphasized that the originality of the French Senate is also due to the fact that it differs from the second federal chambers for many reasons, especially that it is not supposed to defend, as a matter of priority, the interests of local and regional

authorities and it does not ensure the specific and egalitarian representation of all local and regional authorities, given their high number, compared with that of the federated states. The French senator ensures the overall representation of all local authorities, unlike the Swiss or American senators who each ensure the organic representation of a Canton or a state (Robbe, 2001). Indeed, R. CARRE De EMALBERG highlighted the difference between the representation of the federated states by the second federal chamber and the French Senate. He pointed out that the two French parliamentary chambers are elected in different ways, but this does not imply any distinction between the members of the State (Carre De Malberg, 1985). In other words, F. ROBBE says that local communities are represented in the Senate, as communities of citizens and not as legal entities; thus, the representation of local authorities cannot be equated with the representation of federated states or corporations⁴.

B. The position of the French Senate in the Political system

The actual position of the French Senate derives from the particularity of its bases of legitimacy (The territorial collectivities). Indeed, the actions of the Senate reveal that it represents local interests and, hence, defends the autonomy of local collectivities⁵. A. DELCAMP's thesis, which gives an exhaustive account of the preparatory work of the legislative texts relating to local collectivities, over the period 1969-1990, highlights the significant role of the Senate, during this period, in protecting the status and the prerogatives of local collectivities⁶. The former President of the French Senate from 1968 to 1992, A. POHER, had confirmed it by saying that: 'Decentralization and the Senate are *indissociable*; by vocation, the Senate, entrusted by the Constitution with ensuring the representation of the territorial

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collectivities of the Republic, had to animate this long march which led to the present decentralization (Delcamp, 1991). In the same direction, C. PONCELET, a former President of the Senate, too, from 1998 to 2008, pointed out that, in addition to the representation of the French people in the lower house, the representation of local and regional authorities in the second chamber was a 'constitutional bonus' for the decentralization process⁷.

The French Constitutional Council, in its decision of July 6th, 2000, on the law pertaining to the election of Senators, gave more clarifications on the role of the Senate in representing local and regional communities, in accordance with the article 24 of the Constitution. Its decision implies that the Senate must be elected by an is, itself, the emanation electoral body which these communities⁸. As a result, the Senateis meant to express the national sovereignty from a different perspectivethan the lower chamber (GREP, 2001). Some French constitutionalists emphasize that the neglect of the representation of territorial communities by second chambers in unitary Stateswould undermine their very reasons to exist as is the case of the Italian(Brilla, 2016)and the Spanish senates (Duprat, 2000). The territorial representation is a representation of the people conceived from a human geographic perspective; i.e., a representation of territorialized human communities, at the municipal level as well as at the departmental and the regional levels (Duprat, 2009).

Now that it has been made clear that the bases of legitimacy of the French Senate (the territorial collectivities) justify its distinguished position in the political system (the defender of local life), we can inquire about the foundations of the Egyptian and the Tunisian second parliamentary chambers, as compared to their model of inspiration (the French tradition).

3. The Foundations of the former Tunisian Majlis Al-Mustasharin and the Egyptian Majlis A-Shura

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In contrast to the bicentennial French second parliamentary chamber, some second parliamentary chambers could not adapt themselves to the changing realities and circumstances, particularly those which were not distinguished from the lower chamber, neither by their modes of designationnor by theirroles. In the European context, for instance, thetrend in Scandinavian countries had been toward the eviction of second parliamentary chambers: Finland, in 1906, Denmark, in 1953, Sweden, in 1969, Iceland, in 1991, and Norway, in 2008, all gave upthe bicameral system in favor unicameralism (Moanes, 2011) . Consequently, other forms of representation of political minorities in the lower house have been adopted and the second chamber has been ousted from political life. More recently, the 'Seanad Eireann', the upper house of the Irish Parliament, established by virtue of the 1937 Constitution, narrowly escaped abolition in a referendum held on October4th, 2013.

In a different context, the Tunisian 'Councilors Chamber' succumbed to the drastic political changes and was officially abolished by virtue of article 50 of the current constitution ⁹. Likewise, The Egyptian 'Majlis Ashoura', the upper house, created in 1980 by a constitutional amendment was evicted from political life after the adoption of the 2014 constitution¹⁰. In order to apprehend the motivations of this devolution, two main points are to be discussed below in the light of the French model: composition and representativeness (A) and prerogatives and performance (B).

A. The Composition of the former Tunisian and Egyptian upper chambers

The composition of the former upper chambers in, respectively, Tunisia and Egypt can shed light on their theoretical and political justifications.

i. The Tunisian Chamber of Councilors

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In Tunisia, which triggered what is called the 'Arab spring' in 2011, a new constitution was finally adopted on January 27th 2014 with 92% of the votes in the constituent assembly ¹¹, which does not reflect two years of stormy and polarized debates (Weichselbaumdu& Philippe, 2015). This constitution, hailed internationally as the first Arab democratic constitution, represents a remarkable breakthrough, not only in the North African region, but in the Arab World, too. Nevertheless, the constituents have decided to get rid of the upper chamber, established in 2002.

According to the Tunisian echoes, the causes of the abolition of the second chamber revolves around the demographic and geographical smallness of Tunisia, compared to the high cost of this chamber and its almost obliterated role ¹², which made of it a burden on the political life and on the State budget ¹³.

The composition of the late Tunisian second chamber reflects the representation of three segments of the society, on an equal footing; one third is elected by and from among professionals, another third is elected from local representatives ¹⁴ and the remaining third is appointed by the President of the Republic ¹⁵. Some Tunisian scholars and politicians consider that the successive constitutional reforms had extended the powers of the Head of State at the expense of the lower chamber (Chamber of Deputies) (Horchani, 2004) and, likewise, the constitutional reform of 2002 came within the same spirit; in this regard, M. CHARFI, a former minister, considered that a second chamber would likely be a burden on the parliamentary action as well as on the State budget (Gobe&Geisser, 2006).

Regardless of the political justifications of the Tunisian upper chamber, its composition reminds of the project of constitutional amendment ¹⁶, proposed by the former French President, Charles De Gaulle, but rejected by the French people via a referendum held on

April 27th, 1969, in which the Senate was meant to ensure a dual representation: political and socioeconomic (De Gaule, 1970).

ii. The Egyptian Consultative Council

Though the political motivations of the Tunisian upper chamber and its composition were not convincing at the very time of its instatement, it tried to emulate the French Senate in representing the territorial collectivities since one third of its members emanated from those collectivities. However, the composition of the Egyptian upper chamber was too far from the French model. Actually, the composition of the former upper chamber reveals its feeble legitimacy; two thirds (2/3) of its members were elected by direct universal suffrage and one third (1/3) was appointed by the President of the Republic¹⁷. Hence, the mode of designation of the two thirds of the Consultative Council was not different from the mode of designation of the members of the lower houseand the mode of designation of the remaining thirddoes not go hand in hand with the democratic theory nor with the principle of separation of powers. As a result, the Egyptian upper chamber did not bring any new form of representation of the Egyptian people, but rather consolidated an authoritarian regime. Compared with the role of the French Senate, the composition of the former Egyptian upper chamber disregarded the territorial perspective in representing the Egyptian people, though Egypt is the first Arab country to adopt territorial decentralization in 1909 (Almabidhine, Altaraouna, & Abdelhadi, 2011).

According to A. FARGHALI, a former councilor, the Consultative Chamberwas rather created to satisfy the regime 'sympathizers' who were not lucky in the elections of the lower house¹⁸;thus, the people ridiculed it during the 2012 elections, as the participation rate did not exceed 7%¹⁹!

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B. The Prerogatives of the Tunisian Chamber of Councilors and the Egyptian Consultative Council

The prerogatives of the former second parliamentary chambers in Tunisia and Egypt can supplement the previous point in order to have a clearer picture on the foundations of these chambers.

i. The Tunisian Chamber of Councilors

The successive reforms of the Tunisian Constitution have limited the powers of the Chamber of Deputies for political reasons far more than for constitutional considerations (Horchani, 2004). The constitutional reform of 2002, that instated a second parliamentary Chamber with mere consultative prerogatives, was also conceived with the intent to weaken the parliament. In addition, the Tunisian Constitutional Council used to limit the prerogatives of the two parliamentary chambers. By way of example, the amendments introduced by the Chamber of Deputies, providing for a certain discretionary power for the benefit of local public authorities during the discussion of the draft Code of Local Taxation, were rejected by the Constitutional Council at the instigation of the President of the Republic, BE-NAALI (Moanes, 2011).

As a result, the Chamber of Councilors did not succeed to enroot itself in the Tunisian political regime, after the fashion of the French Council of the Republic (*Conseil de la République*), under the 1946 constitution, whose members, the Counselors of the Republic (*Conseillers de la République*), sought legal and political means, not only to regain the prestige of the title of 'Senators', but also to rehabilitate the role and composition of the secondchamber (The Senate) (Goguel, 1982). In Tunisia, however, the two thirds of the

members of the Councilors Chamber, elected by and from among the members of local assemblies, did nothing to reinforce the local collectivities andto consolidate their sources of legitimacy.

Though the comparison with the French Senate is not fair, but the pale role of the Tunisian upper chamber did not provide its defendants in the Constituent Assembly with strong arguments to prevent its abolition.

ii. The Egyptian Consultative Council

Some days before the adoption of the Tunisian constitution, Egypt ratified its new constitution by referendum on 14 and 15 January 2014. This constitution should be understood within the scope of the very specific context of its adoption, but also within the Egyptian constitutional history because it comprises a large number of provisions of the previous constitutions (Moisserondu&Bouras, 2015). Generally speaking, it does not reflect the same spirit of the Tunisian constitution as it reaffirms authoritarian power without serious consideration of the people's expectations. (Moisserondu&Bouras, 2015).

The defunct Egyptian second chamber was abolished after an intense controversy because of the objections of the traditional parties within the Committee in charge of drafting the new constitution, personalities (the Committee of of fifty 'Lajnatalkhamcine'). This committee opted for unicameralism with 23 votes in favor and 19 against, which shows that the gap between pros and cons of bicameralism is not impressive ²⁰. After the ratification of the project by constituent referendum, the present parliament is composed of the House of Representatives 'Majlis An-Nowwab', in accordance with article 101 of the Constitution ²¹. At a press conference, the Egyptian Minister of Justice, A. EL MAHDI, in response to a question raised by A. JOHNSON, Secretary General of the Inter-Parliamentary Union, on the abolition of the Shura

Council,replied that the constitution, approved by the Egyptian people, has decided that the Parliament should be unicameral²².

Unlike the neutral declaration of A. AL MEHDI, A. FARGHALI points out that this chamber had no clear role for the community, both in terms of legislation and in terms of control of governmental action and, on most legislative matters, the lower house (the People's Assembly), had always the last word in case of disagreement²³. Indeed, in a preliminary report by the Carter Center on the election of the *Shura* Council, published on 28 February 2012, the Center found that the election was characterized by a lack of interest, highlighting the uncertainty about the value and role of the *Shura* Council in relation to the transitional context in Egypt²⁴.

Generically, what has been said about the comparison between the Tunisian upper Chamber and the French Council of the Republic can be reiterated here, too, because the Egyptian upper chamber had a very limited role and it did not seek to improve its sources of legitimacy nor its role; therefore, it gave a tarnished picture of bicameralism, especially in the Constituent Committee of Fifty.

4. Conclusion

In a unitary State, a second parliamentary chamber is unnecessary if the modes of designation of the members of both chambers would generate the same forms of representation, particularly if the role of the upper chamber has no effective influence on the lower chamber or on the government.

The abolition of the Tunisian upper chamber can be justified, given the relative geographic and demographic smallness of Tunisia, the feeble autonomy of the decentralized territorial communities and the obliterated role of the former second chamber, not to mention its financial cost.

As regards the abolition of the Egyptian upper chamber, this research assumes that the Egyptian constituent assembly 'Lajnat Al-Khamcine' did not make a clear distinction between the actual composition and prerogatives of the former upper chamber and the necessity of bicameralism for Egypt. The composition of the former upper chamber disregarded the representation of the decentralized local entities and rather reinforced the hegemony of the President of the Republic over the parliament.

Bicameralism is not necessary in Tunisia, unless territorial communities gain more autonomy and, therefore, would require political representation at the national level; hence, this research assumes that in such a different context, bicameralism would be foreseeable, especially in better economic conditions.

As regards the Egyptian case, it is to be emphasized that This country is one of the biggest countries in the MENA region, geographically and demographically and possesses the oldest decentralized territorial communities in the Arab World, which can provide solid democratic bases for the composition of a second parliamentary chamber. Therefore, the reinstatement of a second parliamentary chamber, emanating from territorial communities, is highly recommended. The role of this parliamentary chamber in Egypt, should, at least, be translated in the power to veto the laws approved by the lower chamber, particularly those pertaining to local life, and in the right to be informed about issues relating to local life, via oral or written questions addressed to the government orthrough special committees created for this purpose. Indeed, an efficient interaction between the upper parliamentary chamber and the territorial communities may enhance the autonomy of the latter and enlarge the prerogatives of the former.

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⁴F. ROBBE points out that such a role would require constitutional revision because it would disturb the institutional balance, established by the 1958 constitution. ROBBE François. *op.cit.*, p. 551.

¹For more details on the probable reforms of the Italian Senate, see, for example, Manuella BRILLA.La probable réforme impossible du Sénat italien. *in Revue Française de Droit Constitutionnel*, n° 107, 2016, pp. 575-599.

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 $^{^{3}}Idem$.

⁵Idem.

⁶ Ibid., p. 461.

⁷ SENAT. Discours de M. Christian PONCELET en clôture des États généraux des élus locaux de Picardie, vendredi 30 juin 2006. [online] http://www.senat.fr/senateurs/presidence-1998-2008/presidence/cloture_picardie.html (consulted no07/03/2016, 22:00).

⁸ CONSEIL CONSTITUTIONNEL. Décision n° 2000-431 DC du 6 juillet 2000 [online] http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2000/2000-431-dc/decision-n-2000-431-dc-du-06-juillet-2000.450.html (consulted on 1/20/2016, 22:00).

- ⁹ See article 50 of the Tunisian constitution in force. *LEGISLATION.TN* http://www.legislation.tn/en/constitution/article-19-amended-constitutional-law-n%C2%B0-76-37-dated-april-8-1976-and-constitutional-la* (consulted on 9/11/2016, 13:00).
- ¹⁰CONSTITUTEPROJECT.ORG. Egypt's Constitution of 2014 [online] https://www.constituteproject.org/constitution/Egypt_2014.pdf (consulted on 11/11/2016, 15:00).
- ¹¹ The Constituent assembly replaced the parliament until the adoption of the constitution and the establishment of the Representatives Assembly.
- ¹²TOUNES EL FATAT. MP Ahmed Alsafi (Labour Party): Al Nahda and Al Sebsi incarnate the choices of the authoritarian regime [online] http://tounesaf.org/?p=1343 (consulted on 2/12/2016, 14:00).
- ¹³ It is to be noted that the popular uprising that emancipated the Tunisian people from the yoke of absolutism has also paved the way for the emergence of radical Islam and terrorist groups, which affected tourism and,hence, the whole economy.
- ¹⁴ Each governorate elected one or two counsellors according to its demographic density.
- ¹⁵See article 19 of the constitution of the Tunisian Republic, law n° 59-57 of June 1st, 1959, JORT n° 30 ofJune 1st, 1959.
- ¹⁶ De Gaulle, himself, might be inspired by the composition of the Bavarian upper chamber that incarnated this duality of representation (political and socioeconomic). The Bavarian Senate, instated in 1946, was abolished by the constitutional revision, adopted by referendum in 1998, entered into force on January 1st, 2000.
- ¹⁷ See article 194, EGYPTIAN STATE INFORMATION SERVICE WEBSITE. The constitution of the Arab Republic of Egypt, Ratified on May 22, 1980. [online] http://aceproject.org/ero-

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¹⁸ALYAOUM ASSABEA [online]

http://www1.youm7.com/News.asp?NewsID=1571011 (consulted le 22 mars 2014).

¹⁹THE CARTER CENTER. Preliminary Statement on Egypt's Shura Council Election, for immediate release: Feb. 28, 2012 [online] http://www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/egypt-022812-shoura-council-elections.pdf >(consulted on 7/17/2016, 16:00).

²⁰VOICE OF THE EGYPTIAN COPTS. Wading and confusion in the Commission of Fifty, following the decision to abolish the *Shura* Council (*in Arabic*) [online]

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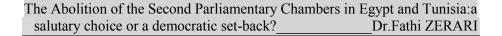
²¹ CONSTITUTEPROJECT.ORG. Egypt's Constitution of 2014 [online] https://www.constituteproject.org/constitution/Egypt_2014.pdf (consulted on 11/11/2016, 15:00)

²² ALYAOUM ASSABEA .loc.cit.

 $^{23}Idem$

²⁴THE CARTER CENTER. Preliminary Statement on Egypt's Shura Council Election, for immediate release: Feb. 28, 2012 [en ligne]. Disponible sur:

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