

**LAS JUSTIFICACIONES DE UNA SEGUNDA CÁMARA
PARLAMENTARIA EN LA REGION DE ÁFRICA DEL
NORTE: UN ESTUDIO COMPARATIVO ENTRE ALGERIA,
EGIPTO, MARRUECOS Y TÚNEZ**

The justifications of the Second Parliamentary Chambers in The
North African region: A comparative Study of Algeria, Egypt,
Morocco and Tunisia

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PARLAMENTARES NA REGIÃO NORTE-AFRICANA:
UM ESTUDO COMPARATIVO ENTRE ARGÉLIA, EGITO,
MARROCOS E TUNÍSIA**

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ABSTRACT

As a collegial institution, the parliament is becoming more and more important in the countries where the democratic processes are taking place, as it is the most favorite political space where the different components of the society can synergize to generate a smooth and effective democratic change.

Since the bicameral or the unicameral organization of the parliament can have significant sociopolitical implications, it is important to understand the motivations underlying the choice between the two types of organization.

The present research attempts to evaluate the reasons underlying the institution, the reinstatement or the abolition of the second parliamentary chambers in some Northern African countries, namely: Algeria, Egypt, Morocco and Tunisia. This evaluation will be conducted within the frame of the comparative approach and with a particular reference to the French tradition as a source of inspiration for the studied countries.

** Artículo de reflexión que se enmarca en el análisis del derecho comparado internacional dentro del ejercicio profesional del autor como profesor universitario.*

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KEYWORDS

Democracy, Representation, Second Parliamentary Chambers, Legitimacy, Efficiency

RESUMEN

Como una institución colegiada, el parlamento está cobrando más importancia en los países donde están ocurriendo procesos democráticos, ya que es el espacio político favorito donde los diferentes componentes de la sociedad pueden establecer sinergias para generar un cambio democrático suave y efectivo.

Como la organización bicameral o unicameral del parlamento puede tener implicaciones sociopolíticas significantes, es importante entender las motivaciones que subyacen a la elección entre estos dos tipos de organización.

Esta investigación intenta evaluar las razones subyacentes a la institución, el restablecimiento o la anulación de la segunda cámara parlamentaria en algunos países del norte de África, concretamente: Algeria, Egipto, Marruecos y Túnez. Esta evaluación será llevada a cabo dentro del marco del enfoque comparativo y con una referencia particular a la tradición francesa como fuente de inspiración para los países en estudio.

PALABRAS CLAVE

Democracia, representación, segunda cámara parlamentaria, legitimidad, eficiencia.

RESUMO

Como uma instituição colegiada, o Parlamento está se tornando mais importante nos países onde os processos democráticos estão ocorrendo é favorito espaço político, onde os diferentes componentes da sociedade podem estabelecer sinergias para gerar um suave e eficaz mudança democrática.

Como organização de Parlamento unicameral ou bicameral pode ter significativas implicações sócio-políticas, é importante compreender as motivações que fundamentam a escolha entre estes dois tipos de organização.

Esta pesquisa tem como objetivo avaliar as razões subjacentes para a instituição, a

restauração ou o cancelamento da segunda câmara parlamentar em alguns países no norte da África, ou seja: Argélia, Egipto, Marrocos e Tunísia. Esta avaliação se processará no âmbito da abordagem comparativa e com particular referência à tradição francesa como uma fonte de inspiração para os países em estudo.

PALAVRAS-CHAVE

Democracia, representação, segunda câmara parlamentar, legitimidade, eficiência.

INTRODUCTION

The parliament contributes to the synergy of efforts of the various components of the society and offers a space for dialogue, debate, deliberation, respect of the majority's decision and tolerance of the minority.

In the underdeveloped countries, such as the North African region, the heterogeneity of the social fabric¹ can generate factions that have negative repercussions on the political, administrative, social and economic levels². Thus, the parliament can help to contain subnational loyalties so that they do not weaken the national unity³; in addition, the unicameral or bicameral⁴ organization of the legislative power can also have a significant sociopolitical impact.

1. *In the Arab world, the role of religion is undeniable in defining the role of the State, particularly in the aftermath of the popular uprisings that led to the collapse of many Arab regimes (Syria, Libya, Yemen) and the advent of the so called 'Islamic State in Iraq and the Levant' in the middle eastern political scene. For more details on the origin and the evolution of ISIL, see LUIZARD Pierre-Jean. L'Etat islamique à la conquête du monde. in Le Débat, 2016-3, n° 190, pp. 135-153. See also Mark LYNCH. The Arab Uprisings Explained: New Contentious Politics in the Middle East, New York, Columbia university Press, 2014, pp. 202-*

2. *GALLEB Abdelkrim. Defense of Democracy: a historical-analytical research (in Arabic). Mohammadia : Editions Fadhal, 1967, pp. 171-173.*

غلاب عبد الكريم. دفاع عن الديمقراطية: بحث تاريخي تحليلي. المحمدية : مطبعة فضالة, 1967, ص 171-173.

3. *NGONO TSIMI Landry. L'Autonomie administrative et financière des collectivités territoriales décentralisées : l'exemple du Cameroun. Thèse : droit public. Paris : Paris-Est Créteil Val-de-Marne U.F.R De Droit, 2010, pp. 274,275.*

4. *Unicameralism is a parliamentary organization based on a one chamber; whereas bicameralism requires a second chamber, commonly called upper chamber, often representing sub-state entities.*

In the context of the North African region, bicameralism thrives in some countries, like Algeria and Morocco and declines in others, as is the case for Tunisia and Egypt. In these four countries people uprisings and the rise of Islamism have enhanced constitutional reforms pertaining to different matters, especially parliament organization. Pros and cons of bicameralism in these countries rely on various justifications to defend their antagonist stances.

Critics of bicameralism put forward the uselessness or inefficiency of a second parliamentary chamber, the parliamentary or budgetary overload and even the lack of legitimacy of such an institution in a unitary State⁵; for instance, M. VERPEAUX points out that the unitary State is characterized by the unity of the political power which is translated, from a legal point of view, into the existence of a single category of laws⁶. However, the defenders of bicameralism believe that in a representative democracy, a second parliamentary chamber could improve representation; in this respect, E. DUVERGIER emphasizes that the second chamber is not and must not be an arbitrary work because it must reflect the very heart of the society and be its faithful representation⁷.

The tense debates between pros and cons of bicameralism, particularly in the aforementioned countries, raise questions about the legitimacy and/or the usefulness of a second parliamentary chamber. Indeed, Tunisia and Egypt renounced bicameralism after the popular uprisings, called 'Arab Spring'. Moreover, the justifications of bicameralism in Algeria and Morocco are asymmetrical; while the Algerian second parliamentary chamber, instituted in 1996, has been consolidated by the constitutional revision

of January 2016, Morocco has been hesitant about maintaining the upper chamber, established in 1962.

The aim of this research is to set out guidelines that can be used to evaluate the legitimacy and/or the usefulness of a second parliamentary chamber in the studied countries (Algeria, Egypt, Morocco and Tunisia). Although the sociopolitical contexts of these countries are not identical, the comparison of the reasons underlying the institution or the reinstatement of the second parliamentary chamber in, respectively, Algeria and Morocco, on the one hand, and the causes of its abolition in Tunisia and Egypt, on the other hand, can shed light on the sought guidelines. This comparison is conducted within the frame of the existing doctrinal debate on the justifications of a second parliamentary chamber in a unitary State and in the light of the French bicameral experience, as a model of inspiration for many Arab and African countries, particularly the cases herein studied.

The research is, consequently, framed as a debate about the **legitimacy** and **usefulness** of second parliamentary chambers in the studied countries. Therefore, the **composition** and **role** of the studied second chambers are to be stressed throughout the research. Nevertheless, the research starts from a larger context (second parliamentary chambers in unitary States) in order to avoid the risk of being confined within the limits of the particular studied cases, without having grounds of comparison; meanwhile, the research risks to drown in the particularities of the different contexts and, hence, having flimsy grounds of comparison; therefore, the sources of legitimacy and the role of the French Senate will provide more precise guidance to the research.

Consequently, this research will discuss:

- the justifications of bicameralism in a unitary State, stressing the originality of the French bicameral model;

- the particular reasons underlying the abolition of the Tunisian and the Egyptian second parliamentary chambers, on one hand, and the institution of a second parliamentary chamber in Algeria and its reinstatement in Morocco, on the other hand.

5. SOMALI Kossi. *Le parlement dans le nouveau constitutionnalisme en Afrique. Essai d'analyse comparée à partir des exemples du Bénin, du Burkina Faso et du Togo*. Law: Université du Droit et de la Santé - Lille II, 2008. French. <tel-00288063> [en ligne]. Disponible sur : < <https://tel.archives-ouvertes.fr/tel-00288063/document> > (consulted on 8/9/2016, 18 :00).

6. VERPEAUX Michel. *L'unité et la diversité dans la République*. in *Les Nouveaux Cahiers du Conseil constitutionnel*, 2014-1, n° 42, p. 8. It should also be noted that bicameralism, as G. BURDEAU points out, does not imply the fragmentation of sovereignty. NACH MBACK Charles. *La seconde Chambre dans les nouveaux Parlements africains*. op.cit., pp. 108-109.

7. DUPRAT Jean-Pierre. *Le Sénat et les collectivités locales*. in *SENAT. Le Sénat de la Ve République, les cinquante ans d'une assemblée bicentenaire*, Palais du Luxembourg, 3 juin 2009. Paris : *Les colloques du Sénat-Les actes*, 3 juin 2009, p. 67.

1. SECOND PARLIAMENTARY CHAMBERS IN UNITARY STATES

Since democracy has become a source of legitimacy and the universal suffrage has asserted itself as a process of access to power in a representative or a semi-direct democracy, any power that does not emanate from the people would have its legitimacy compromised. Thus, in front of a chamber elected by universal and equal suffrage, a second parliamentary chamber, in a unitary state, should be based on solid justifications; otherwise, it risks to be a pale imitation of the lower house or even be abolished. If bicameralism has asserted itself in federal states⁸, the legitimacy of a second parliamentary chamber in a unitary State could be compromised.

Als bicameralism an exclusive feature of federal States?

Chronologically, the democratic second parliamentary chamber in unitary states appeared after the representative chamber of the federated states which could be interpreted as an institutional mimesis, but in a different context. However, the second democratic chamber was preceded by the aristocratic chamber, representing nobility, such is the case of the English House of Lords.

British bicameralism, as R. SAINT-ETIENNE expresses it, was the result of an accommodation of the interests of the nobility with those of the people⁹. With the success of the American and French revolutions and the overthrow of the yoke of monarchism and absolutism, democracy has become a source of legitimacy and universal suffrage has asserted itself as the basis of power. Bicameralism in democratic federal states is then a necessity to ensure the representation of the peoples of the federated States on a demographic basis by the lower house, while the upper chamber equally represents the federated states, regardless of their demographic weight.

After the French Revolution, in 1789, the representatives of the people dreaded the return of the power of the nobles via an upper house,

8. *The United Arab Emirates is a federal state; however, its legislature is unicameral.*

9. MORABITO Marcel, *Histoire constitutionnelle de la France (1789-1958)*, Paris, Domat, Montchrestien, 7ème éd., 2002, p. 56.

after the style of the British one, but despite the triumph of their tendency, the arguments in favor of bicameralism persisted; indeed, B. D'ANGLAS took the example of the United States of America, 'our elder in the career of liberty', as he put it, where the legislative power is vested in two chambers, which resulted in public peace¹⁰.

R. CARRE DE MALBERG gives a clear explanation of this parliamentary organization in the federal states. He considers bicameralism as an inevitable consequence, since the federal state has two kinds of members: the citizens who constitute the federal people, on the one hand, and the Federated States, on the other¹¹.

In the United States of America, for example, bicameralism is copied by all federated states¹². This is a very clear indication that bicameralism is not an exclusive feature of federal States. Furthermore, Utah justifies this mode of organization, in article VI, Section 4 of its constitution, by the representation of the territorial entities (the districts)¹³. Should bicameralism, in unitary States, be perceived as a form of institutional mimesis in a different context? This hypothesis is immediately excluded because the second federal chamber is itself preceded by the aristocratic chamber, representing the nobility; furthermore, second chambers in unitary States are justified by atypical arguments, regardless of a particular mode of representation.

B. Asymmetry of the Foundations of Bicameralism in Unitary States

Although the historical course of bicameralism seems to be closely linked to that of the principle of separation of powers, the establishment of most second parliamentary chambers respond to practical¹⁴ and atypical

10. MORABITO Marcel. *Ibid.* p. 116.

11. CARRE DE MALBERG Raymond. *Contribution à la théorie de l'État*. Paris : CNRS éditions, 1985, p.557.

12. *with the exception of Nebraska which considers it unnecessary.*

13. UTAH STATE LEGISLATURE. *Utah Constitution [online]* <http://le.utah.gov/code/const/htm/00106_000400.htm> (consulted on 10/5/2016, 11 :00).

14. MOANES Hassen. *Recherche sur les fondements du bicamérisme : Bicamérisme et séparation des pouvoirs en France et en Tunisie. Thèse : droit public fondamental*. Toulouse : université de Toulouse, 2011, 418 p., p. 105.

reasons which depend on the particularities of each country; as a result, their names, roles and compositions are also atypical¹⁵.

An overview of the underlying reasons for the second parliamentary chambers in unitary states shows that they are diverse and that their originality cannot be confirmed independently of the context of each experiment. Moreover, the second chambers do not have the same prerogatives because the ecosystem conditions their functions.

For example, one of the justifications of bicameralism has to do with the prevention of political dead-ends, particularly when the lower chamber and the government are at the antipodes of one another on certain questions, which may lead each of them to attempt to dominate the other¹⁶. In this case, the upper chamber would anticipate such a situation or, eventually, would assume the role of mediator in order to reconcile the two parties or, at least, reduce the intensity of the conflict.

In addition, the upper chamber can be introduced in the political system with the intention of containing the impulsiveness of the lower house, due to political tensions or lack of expertise, which ensures the stability of the legal order¹⁷ and constitutes a guarantee against the tyrannical omnipotence of the majority in the lower house¹⁸.

In some countries, a way of organizing the legislature, dubbed 'quasi-bicameralism' or 'occult bicameralism', can also exist; such a solution is adopted in Luxembourg or Greece by means of institutions, composed of experts

in various fields, acting as second chambers. In Luxembourg, the Council of State, composed of former ministers, former trade unionists and academics, is consulted before adopting laws¹⁹. This is also the case in Greece, where the Scientific Council assumes the same role²⁰.

The justification of bicameralism can also be conceived in the intention to weaken the role of the Parliament, as is the case in Tunisia before 2011 when the upper chamber (The House of Councilors) was rather an advisory body, intended to hinder the lower house at the request of the President of the Republic²¹. It was almost the same case in Burkina Faso, where the House of Representatives had only advisory prerogatives and could not formulate its opinions unless they were requested²². The referral to the House of Representatives belongs to the Government, the lower house (the National Assembly) and to the Permanent Bureau of the House of Representatives in order to request an advisory opinion on a legislative initiative deemed to be of national importance²³.

The asymmetry of the foundations of bicameralism in unitary states may explain the divergence of bicameral experiences in different countries. For example, in the two previous countries, the paths of bicameralism have, in fact, diverged though both countries are inspired by the French bicameral model. While the House of Representatives of Burkina Faso, dissolved on January 23rd, 2002²⁴, was replaced by a strong Senate with the right

15. CHRAYET Liamine. *The Reality of Bicameralism and the Position of the Algerian Experience (in Arabic)*. in *Majallat Al Fikr Albarlamani*, 2002, n°1, p. 22.

شريط ليامين. واقع البيكاميرالية في العالم ومكانة التجربة الجزائرية فيها. مجلة الفكر البرلماني، 2002، العدد الأول، ص 22.

16. For instance, the lower house might hinder the action of the government and the latter may paralyze the implementation of laws by not issuing the necessary bylaws.

17. QALOUCH Moustafa. *Political Regimes, Part I : The State . Rabat : éditions & distribution Babel. 1985. p. 170.*

مصطفى قلووش: النظم السياسية، القسم الأول: الدولة. الرباط: بابل للطباعة والنشر والتوزيع، 1985، ص 160.

18. See for example: MASTIAS Jean. *Système majoritaire et bicamérisme*. in : *Pouvoirs*, 1998, n° 85, pp. 90-91.

19. GELARD Patrice. *Rapport introductif de synthèse de la commission de Venise. SENAT-PALAIS DE LUXEMBOURG. Le bicamérisme et la représentation des régions et des collectivités locales : le rôle des secondes chambres en Europe, Palais de Luxembourg, 2008. Paris : les colloques du Sénat-les actes, 2008, pp. 28-29.*

20. *Idem*.

21. BEN HAMMED Mohamed Ridha. *La compétence des secondes chambres*. in *Les secondes chambres parlementaires. Tunis : Recueil des cours de l'A.I.D.C., 2004, vol. XIII, XIXème session, p. 92.*

22. However, since the constitutional revision of 4/11/2000, the opinion request from the House of Representatives had become mandatory when the legislative initiatives were related to citizenship, civil rights, the exercise of civil liberties, nationality, matrimonial regimes, protection of freedom of the press and access to information and the integration of national cultural values. Despite the non-binding nature of these opinions, the lower house used to take them into account. KIEMDE Paul. *Le bicamérisme en Afrique et au Burkina Faso*. in *Revue Burkinabé de droit*, n° 2, janvier 1992, p. 31.

23. *Idem*.

24. Article 78 of The CONSTITUTION of BURKINA FASO [online] <https://www.constituteproject.org/constitution/Burkina_

to initiate, amend and pass laws²⁵, the Tunisian Chamber of Counselors was evicted from the political scene by virtue of the 2014 constitution²⁶.

C. The Originality of the French Bicentennial Bicameral Model

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' autonomy²⁷. 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, as a model to be 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 mode of election of the second chambers in Italy²⁸ and Spain makes them almost duplicates of the lower house, which makes the reason of bicameralism in these two countries unclear. Nevertheless, no one would consider the French Senate as a copy of the lower house (the National Assembly).

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 Republic²⁹'. Hence, a brief historical overview on the French Senate would be very useful to highlight its evolution and its originality in the representation of French society.

Faso_2012.pdf?lang=en> (consulted on 11/12/2016, 13 :00).

25. See articles 97 and 98 of The Constitution of Burkina Faso. *Idem*.

26. Article 50 of The CONSTITUTION of TUNISIA. [online] <<http://www.legislation.tn/sites/default/files/news/constitution-b-a-t.pdf>> (consulted on 2/26/2016, 22:00).

27. GELARD Patrice. Rapport introductif de synthèse de la commission de Venise. *op.cit.*, p. 27.

28. For 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.

29. GELARD Patrice. *op.cit.*, p. 61.

i. A brief historic overview on the origin and evolution 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 laws which the First Chamber, the Council of Five Hundred (*Conseil des Cinq-Cents*), proposed³⁰. 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 King and his Prime Minister with the House of Commons³¹.

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 republicans³². Some constitutionalists draw attention to the 'commune', as a basic territorial unit and a sociological reality, on the basis of which the Senate of this period (1873-1875) was edified³³. 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,

30. SENAT. Histoire - 8 périodes - 1795-1799 : le Conseil des Anciens [online] <http://www.senat.fr/histoire/conseil_anciens.html> (page consulted on 6/30/2016, 17 :00).

31. *Idem*.

32. BELQACEM Mourad. The Bicameral System and its Applications (in Arabic). Alexandria : Legal Library Alwafa'a, 2009, p. 58.

بلقاسم مراد. نظام الازدواج البرلماني وتطبيقاته، دراسة مقارنة. الإسكندرية: مكتبة الوفاء القانونية، 2009، ص 58.

33. DUPRAT Jean-Pierre. Le Sénat et les collectivités locales. in SENAT. Le Sénat de la Ve République, les cinquante ans d'une assemblée bicentenaire, Palais du Luxembourg, 3 juin 2009. *loc.cit.*

too, has its tendencies and rights that should be reproduced in the Senate³⁴.

ii. The French senate and the representation of local life

L. FAVOREU, president of the French Association of Constitutionnalists (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 chamber³⁵. 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"³⁶.

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 state³⁷. 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 State³⁸. 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 corporations³⁹.

Could it be said, then, that the sub-State territorial entities, at least in France, are represented, as a whole, by the Senate, without one or more of them having a separate representation like the federated states?

In fact, the actions of the Senate reveal that it represents local interests and, hence, defends the autonomy of local collectivities⁴⁰. Indeed, 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 collectivities⁴¹. 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 collectivities of the Republic, had to animate this long march which led to the present decentralization'⁴². 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 process⁴³.

The French Constitutional Council, in its decision of July 6th, 2000, on the law pertaining to the election of Senators, clarified that the role of the Senate in representing local and regional authorities, in accordance with the article 24 of the Constitution, implies that it must be elected by an electoral body which is, itself, the emanation of these communities and that, consequently, this

34. DE GAULE Charles. *Discours et messages T. 2 dans l'attente 1946-1958*. Paris : Plon, 1970, p. 9.

35. ASSOCIATION FRANÇAISE DES CONSTITUTIONNALISTES. *Le bicamérisme, journée d'études du 17 mars 1995, collection droit public positif*, in *Economica*. Marseille : Presses universitaires d'Aix-Marseille, 1995, p.11.

36. *Idem*.

37. ROBBE François. *La représentation des collectivités territoriales par le sénat : étude sur l'article 24 alinéa 3 de la constitution française du 4 octobre 1958*. Paris : L.G.D.J., 2001, p. 61.

38. CARRE DE MALBERG Raymond. *op.cit.*, p.558.

39. F. 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.

40. *Idem*.

41. *Ibid.*, p. 461.

42. DELCAMP Alain. *Le Sénat et la décentralisation*. Paris : *Economica*, 1991.

43. 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> (page consulted no07/03/2016, 22:00).

electoral body must be essentially composed of members of the deliberative assemblies of local and regional authorities⁴⁴.

The representation of the territorial communities of the Republic by the Senate goes hand in hand with the mode of designation of Senators, elected by an electoral college dominated by local representatives; consequently, it expresses the national sovereignty from a different perspective than the lower chamber⁴⁵.

Some French constitutionalists emphasize that the neglect of the representation of territorial communities by second chambers in unitary States would undermine their very reasons to exist as is the case of the Italian⁴⁶ and the Spanish senates⁴⁷. 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 levels⁴⁸.

Though the French Senate is a model for the herein studied countries, their particular contexts led them to have contradictory positions as regards the bicameral organization of the parliament.

2. NORTHERN AFRICAN UPPER CHAMBERS BETWEEN CONSOLIDATION AND ABOLITION

In the North African region, as well as in other parts in the world, second parliamentary chambers in unitary States are either thriving or declining for various reasons.

Since the 1990, the studied countries have witnessed constitutional reforms under the

44. 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>> (page consulted on 1/20/2016, 22 :00).

45. Groupe de Recherche et d'Études Politiques. *La fonction représentative de la seconde chambre dans l'Etat unitaire, les exemples français et anglais*, 2001, Nancy. Nancy : Presses Universitaires de Nancy, 2001, p. 69.

46. Manuella BRILLA. *loc.cit.*

47. DUPRAT Jean-Pierre. *Les difficultés de la représentation territoriale : le débat sur la réforme du Sénat espagnol*. in *Mélanges Patrice GELARD*, Montchrestien, 2000, p. 378.

48. DUPRAT Jean-Pierre. *Le Sénat et les collectivités territoriales*. *op.cit.*, pp. 67-69.

pressure of popular uprisings and the rise of Islamism. The governments of the Maghreb countries⁴⁹ have followed different paths as regards to the role of Islam in society and more specifically in politics. Algeria, during the 1990s, fought Islamism, incarnated by the Islamic Salvation Front (Front Islamique du Salut-FIS) by armed force, which provoked a civil war that threatened the very existence of the Republic, before it resorted to civil concord and then to national reconciliation in the late 1990s and early 2000s. Tunisia's reticence to conservative Islam has been maintained since the independence, in 1956, thanks to the teachings of its leader and first President of the Republic, H.BOURGUIBA. As for Morocco, the King himself assumes the role of the 'Commander of the believers' (*Amir Elmouminine*)⁵⁰. In Egypt, Muslim Brotherhood organization seized the political power in 2012, after the popular uprising in 2011, to be excluded by the army in 2013. The stance of each country, as regards the role of Islam in politics, might be a part of the explanation to the institution, the reinstatement or the abolition of the second parliamentary chambers in those countries, but each country has got its own particularities.

A. The abolition of the Tunisian and the Egyptian Upper Chambers

Some second parliamentary chambers could not adapt themselves to the changing realities and circumstances, particularly those which were not distinguished from the first chamber, either by their modes of designation, their compositions or their roles. For instance, since the beginning of the twentieth century, the trend, 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 up the bicameral system in favor of unicameralism⁵¹. The second chambers in these Nordic countries proved to be either of little benefit or a heavy burden on political life, but the precise reasons were as varied as the diversity of national contexts. In Denmark, the landowners

49. *The constitutions of Maghreb countries are elaborated according to the French model (the 1958 constitution)*. LE ROY Thierry. *Le constitutionnalisme : quelle réalité dans les pays du Maghreb ?* in *Revue française de droit constitutionnel*, 2009/3 n° 79, p. 554.

50. *Ibid.*, pp. 543 et 544.

51. MOANES Hassen. *op.cit.*, p. 123.

dominated the upper chamber and, consequently, paralyzed the legislative process; in Sweden, the second chamber was considered too conservative; in Norway, the upper chamber was nearly a copy of the lower house in regard of its composition and organization⁵². 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 the 1937 Constitution, narrowly escaped abolition in a referendum held on October 4th, 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 constitution⁵³. Tunisia, which triggered what is called 'Arab spring' in 2011, finally adopted a new constitution on 27 January 2014 with 92% of the votes in the constituent assembly⁵⁴, which does not reflect two years of stormy and polarized debates⁵⁵. 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.

It has been explained above that the Tunisian second chamber was conceived with the intent to weaken the parliament and had only consultative prerogatives (II, 2). Therefore, it 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 second chamber⁵⁶. Though the comparison is not fair, but the pale role of the Tunisian upper chamber did not provide its defendants in the Constituent Assembly with strong arguments. In addition, the feeble territorial entities in Tunisia do not equate with the French territorial collectivities that constitute the bases of the Senate's legitimacy (see II, 3-2). Though two thirds⁵⁷ of the members of the Councilors Chamber are elected by, and from among, the members of local assemblies⁵⁸, they did nothing to reinforce the local collectivities to consolidate their sources of legitimacy⁵⁹.

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 role⁶⁰, which made of it a burden on the political life and on the State budget⁶¹.

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 constitutions⁶². Generally speaking, it does not reflect the same spirit of the

52. SENAT-PALAIS DE LUXEMBOURG. *Formes et fonctions du bicamérisme dans le monde contemporain : à quoi peut donc bien servir une seconde chambre dans une démocratie ?* [online] <<http://www.senat.fr/senatsdumonde/syntheselebicamerismedanslemonde.html#oc73>> (consulted on 5/5/2016, 13:00).

53. See article 50 of the Tunisian constitution in force. *loc.cit.*

54. The Constituent assembly replaced the parliament until the adoption of the constitution and the establishment of the Representatives Assembly.

55. WEICHSELBAUMDU Geoffrey & PHILIPPE Xavier. *Le processus constituant et la Constitution tunisienne du 27 janvier 2014 : un modèle à suivre ?* in *Maghreb – Machrek*, 2015-1, n° 223, pp. 49-69.

56. For more details on this question, see GOGUEL François. *La réhabilitation du bicamérisme en France (1946-1958)*. in *Mélanges Léo Hamon*. Paris : Economica, 1982, pp. 325-333.

57. The other third of the members are elected among employers, farmers and employees at the suggestion of the relevant professional orders.

58. Each governorate elected one or two counsellors according to its demographic density. Article 19 (Amended by constitutional law n° 76-37 dated April 8, 1976, and by constitutional law n° 2002-51 dated June 1, 2002). 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>> (page consulted on 9/11/2016, 13:00).

59. MOUANES Hassen. *op.cit.*, p. 358.

60. TOUNES 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>> (page consulted on 2/12/2016, 14:00).

61. 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.

62. MOISSERONDU Jean-Yves & BOURAS Naima. *La nouvelle Constitution égyptienne : Contexte et avancées*. in *Maghreb – Machrek*, 2015-1, n° 223, pp. 83-98.

Tunisian constitution as it reaffirms authoritarian power without serious consideration of the people's expectations⁶³.

The current Egyptian constitution abolished 'Majlis Ashoura', the upper house, created in 1980 by a constitutional amendment and whose name can be translated in English by 'Consultative Council'. This 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, composed of fifty personalities (the Committee of Fifty 'Lajnat alkhamcine'). 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 impressive⁶⁴. 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 Constitution⁶⁵.

The composition of the former upper chamber reveals its feeble legitimacy. Two thirds (2/3) of the members of this chamber were elected by direct universal suffrage and one third (1/3) of the members were appointed by the President of the Republic⁶⁶.

The mode of designation of the two thirds of the upper house was not different from the mode of designation of the members of the lower house and the mode of designation of the remaining third does 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 1909⁶⁷.

Moreover, the role of the upper chamber was limited and, on most legislative matters, the lower house (the People's Assembly), had always the last word, in case of disagreement⁶⁸. According to A. FARGHALI, a former councilor, the Councilors House was rather created to satisfy the regime 'sympathizers' who were not lucky in the elections of the lower house⁶⁹; hence, the people ridiculed it during the last elections, as the participation rate did not exceed 7%⁷⁰! The comparison between the Tunisian upper Chamber and the French Council of the Republic can be reiterated here, too, because the Egyptian upper chamber did not seek to improve its sources of legitimacy nor its role and, therefore, it gave a tarnished picture of bicameralism, especially in the Constituent Committee of Fifty.

B. The establishment of the Council of the Nation in Algeria and the reinstatement of the House of Councilors in Morocco

In Morocco, the socio-political fluctuations have led to hesitation about the adoption of a bicameral or a unicameral organization of the Parliament. In the 1962 constitution, the country adopted bicameralism and abandoned it in the following constitutions (the constitutions of 1970 and 1972) and it was only in the 1996 constitution⁷¹ that

63. *Idem*.

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

صوت الأقباط المصريين. تخبيط وارتباك بـ"الخمسين" بعد قرار إلغاء الشورى [على الإنترنت]

<<http://www.egyptian-copts.com/article.php?id=24443>> (consulted on 11/11/2016, 17:00).

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

66. 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-en/regions/mideast/EG/Egyptian%20Constitution%20-%20english.pdf>> (consulted on 10/09/2019, 11:00).

67. ALMABIDHINE Safouane, ALTARAOUNA Houcine & ABDELHADI Taoufia. *Centralization and Decentralization in المبيطين صفوان، الطراونة حسين، عبد الهادي توفيق. المركزية و اللامركزية في تنظيم الإدارة المحلية. عمان: اليازوري، 2011، ص 18-19.*

68. ALYAOUOUM ASSABEA [online] <<http://www1.youm7.com/News.asp?NewsID=1571011>> (consulted on 3/22/2016, 09:00).

69. *Idem*.

70. THE 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).

71. This constitution was drafted with the assistance of three French eminent constitutionalists: Georges Vedel, Yves Gaudemet

the second parliamentary chamber, the House of Councilors, has been reinstated⁷² with three fifths (3/5) of its members elected by the territorial collectivities and two fifths (2/5) elected, in each region, by the professional chambers and the representatives of wage earners⁷³.

The composition of the Moroccan upper chamber reflects the political will of the Monarch Mohamed VI, who, in his royal speech, pointed out the inadequacy of the first chamber, which does not represent the live forces of the society, in particular the representatives of wage earners, territorial collectivities and professional orders⁷⁴. The second parliamentary chamber allows the Monarch to defend his interests without being directly implicated as a political actor, while he continues to open up the political system within the context of the lower house⁷⁵. The composition of the Moroccan upper chamber reminds of the project of constitutional amendment⁷⁶, 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 socioeconomic⁷⁷.

As regards the role of the Moroccan upper chamber, it can be said that it is far from being obliterated; though the preeminence of the lower chamber, it disposes of considerable powers, in comparison with the former Tunisian and Egyptian upper houses and the current Algerian Council of the Nation, as it initiates laws, proposes amendments and adopts laws; furthermore, it is

one of three upper chambers in the world that can censure the government⁷⁸.

In Algeria, the political reforms, engaged since 1989⁷⁹, have sought to find constitutional mechanisms to regulate the relations between the political institutions, according to the principles of specialization, organic independence and functional cooperation⁸⁰. The institution of the Council of the Nation '*Majlis Al-Oumma*' might be conceived as one of those mechanisms, as the justifications of bicameralism, according to official sources and doctrinal analyses, revolve around: guaranteeing the continuity of the State⁸¹, maintaining the stability of the executive power⁸², compensating the eventual lack of experts in the lower house⁸³ and increasing representation⁸⁴. The perennial character of this chamber and its composition reflect those four ideas since two thirds of its members are elected by, and from among, the deliberating organs of the territorial collectivities and one third is appointed by the president of the Republic amongst national experts in the socioeconomic domains⁸⁵.

78. KETTERER James. *loc.cit.*

79. Algeria has renounced socialism and the unique party regime since the issuance of the 1989 constitution.

80. MOUSTAFA AL BAHRI Hassen. *Exchanged Control Between the legislative power and the executive power To Ensure the Enforcement of Constitutional Rules: A Comparative Study (in Arabic)*. Thesis : Public Law. Egypt: Ain Shems University, 2006, p. 720.

مصطفى البحري حسن . الرقابة المتبادلة بين السلطتين التشريعية والتنفيذية لضمان نفاذ القاعدة الدستورية - دراسة مقارنة. رسالة دكتوراه قانون عام. مصر: جامعة عين شمس، 2006، ص 720.

81. AWABDI Ammar, 'The role of the Council of the Nation in Rooting the Rule of Law' (in Arabic). *Council of the Nation. The Theoretical and Political Foundations of the Council of the Nation, November 1998, Algiers. Algiers: Editions of the Council of the Nation, 1998, p. 33.*

عوايدي عمار . دور مجلس الأمة في ترسيخ دولة القانون. في : مجلس الأمة الجزائري. المنطلقات الفكرية والسياسية لمجلس الأمة، نوفمبر 1998، الجزائر. الجزائر: نشرات مجلس الأمة، 1998، ص 33.

82. CABANIS André et MARTIN Michel-Louis. *Les Constitutions d'Afrique Francophone. Évolutions récentes*. Paris : Karthala, 1999, p. 123.

83. SALMI Abdesslem. *The System of Two Chambers in the Algerian Constitutional Regime (in Arabic)*. Algiers : Editions of the Council of the Nation, 2006, p. 32.

سالمى عبد السلام. نظام المجلسين في النظام الدستوري الجزائري. الجزائر، نشرات مجلس الأمة، 2006، ص 32.

84. Address of the President of the Algerian Council of the Nation, BOUMAAZA Bachir, in a forum organized by the French Senate. SENATE. *Forum of the Senates of the World, March 14th, 2000, Paris [online]* <<http://www.senat.fr/senatsdumonde/cr1.html>> (consulted on 4/42016, 13:00).

85. See article 118 of the Algerian Constitution, adopted by referendum on November 28th, 1996 with its amendments, JORADP N° 14 of March 7th, 2016, p. 23.

and Michel Rousset. KETTERER James. *From One Chamber To Two: The Case of Morocco, in the Journal of Legislative Studies, Spring 2001, vol. 7, no. 1, p. 18.*

72. CUBERTAFOND Bernard. *Le système politique marocain*. Paris : éditions l'Harmattan, 1997, p181.

73. PARLEMENT DU MAROC, CHAMBRE DES REPRESENTANTS. *Constitution du Maroc du 13 septembre 1996 [online]* <<http://www.parlement.ma/fe/file33.php>> (consulted on 12/11/2016, 14 :00).

74. DUPRAT Jean-Pierre. *Les anomalies du bicamérisme : l'influence des particularismes nationaux sur la représentation territoriale*. in *Le Bicamérisme, 1997, Paris/Aix-en-Provence : Economica /PUAM, 1997, pp. 95-96.*

75. KETTERER James. *op.cit.*, p. 19.

76. 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. *Idem*.

77. *Idem*.

The justifications of the Council of the Nation are also reflected by the role assumed by this chamber. Before the constitutional revision of January 2016, the legislative role of the Council of the Nation was limited to the approval or disapproval of legislative initiatives, already approved by the lower chamber 'The National and Popular Council' (*Al Majlis A-Sha'abi Al-Watani*). After January 2016, this role has been consolidated as the members of this chamber, likewise the deputies and the government, can propose laws pertaining to local organization, territorial planning and territorial division⁸⁶. Moreover, law projects, initiated by the government, are first submitted to the Council of the Nation when they relate to these matters⁸⁷; a priority recognized to the French Senate since the 2003 constitutional reform⁸⁸ and, subsequently, inspired the Algerian constituent legislature.

As for the control of the action of the Government, the Members of the Council of the Nation may address oral and written questions to the members of the Government; they can also organize field visits in order to recognize the reality on the ground, remain informed about the concerns of the citizens and ensure that the law is actually implemented. In addition, the Constitutional revision of January 2016 extends the prerogatives of the Council of the Nation; hence, in addition to the permanent committees, the Council of the Nation, as well as the lower house, can create temporary committees to collect information on any issue, at the national level⁸⁹.

The Algerian bicameral experience is relatively recent, compared to the bicentennial French model, but the mission of 'expert of territorial decentralization' has been consolidated by the constitutional revision of 2016, though it needs to be rooted in real local life, particularly through the consolidation of the autonomy of territorial collectivities that are the source of legitimacy of two thirds of the members of the Council of the Nation.

86. See article 136 of the Algerian Constitution. *Ibid.*, p. 25.

87. *Idem*.

88. HANICOTTE Robert. *Priorité au Sénat. in Pouvoirs, 2004, N°111, pp. 159-176, p. 160.*

89. See article 134 of the Algerian Constitution. *op.cit.*, p. 25.

CONCLUSION

This research has attempted to seek guidelines in order to evaluate the necessity of a second parliamentary chamber in the Four studied countries (Algeria, Egypt, Morocco and Tunisia), where the democratic processes are taking place at different speeds, in proportion to the pressure put on the governments of those countries by their peoples.

Utilizing the comparative approach and with a particular reference to the French tradition as a source of inspiration for the studied countries, the research tried to examine the reasons underlying the adoption or the abolition of the second parliamentary chamber in these countries.

First, it has been made clear that bicameralism is not an exclusive feature of federal States, just as unicameralism is not a distinctive feature of unitary States.

In a unitary State, a second chamber parliamentary 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.

In Algeria and Morocco, the composition of the upper chambers takes into account the representation of local life and the socioeconomic interests. The prerogatives of both chambers indicate that they are far from being mere consultative chambers; moreover, their actual legislative role as well as their control of the action of the government, especially in Morocco, corroborates this claim. The gradual rooting of these two chambers in the political life immunizes them from abolition. Indeed, the recent Algerian constitutional revision in 2016, has consolidated the legislative role of the Council of the Nation as well as its control of the governmental action.

In order to reinforce their legitimacy and their efficiency, the upper chambers in Algeria and Morocco should never lose sight of their roles as defenders of their sources of legitimacy (the local communities); otherwise, they lose their real reason of existence and would be easily ousted from the political scene, as it happened in Morocco between 1970 and 1996.

The abolition of the Tunisian upper chamber, however, can be understood 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. Bicameralism is, then, not necessary in Tunisia, unless territorial communities gain more autonomy and, therefore, would require political representation at the national level. In such a different context, bicameralism would be foreseeable, especially in better economic conditions.

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. However, Egypt is one of the biggest countries in the MENA region, geographically and demographically; in addition, Egypt possesses the oldest decentralized territorial communities in the Arab World, which can provide solid democratic bases for the composition of a second parliamentary chamber. Moreover, the role of a parliamentary chamber, emanating from the people perceived from a different perspective (territorialized communities), would, 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, whether by oral or written questions addressed to the government or via special committees created for this purpose. An efficient interaction between the upper chamber and the territorial communities may enhance the autonomy of the latter and enlarge the prerogatives of the former. Consequently, the reinstatement of a second parliamentary chamber in Egypt is highly recommended.

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