New Approaches to Automatic Termination of Contracts: A Comparative Study between Iranian Law, Iraqi Law, and the 1980 Vienna Convention (CISG)

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Abstract

The present study, entitled "New Approaches to Automatic Termination of Contracts: A Comparative Study between Iranian Law, Iraqi Law, and the 1980 Vienna Convention (CISG)", analyzes the legal institution of Infisakh as one of the mechanisms for the involuntary termination of contracts. Within this framework, the concept of Infisakh and its distinction from rescission (Faskh) and annulment are examined, along with the conditions for its occurrence, including termination clauses, non-fulfillment of suspensive conditions, and force majeure, across the three legal systems. In Iranian law, although Infisakh lacks explicit statutory recognition, it can be inferred from Articles 229, 240, and 245 of the Civil Code. In Iraq, the 1951 Civil Code, influenced by Islamic jurisprudential theories and French civil law, prescribes more precise conditions for Infisakh and explicitly addresses it in Articles 261, 268, and 274. In contrast, the Vienna Convention adopts an approach based on voluntary termination, allowing automatic termination only if a termination clause is stipulated. The study reveals that although the concept of Infisakh is accepted in all three legal systems with the aim of maintaining contractual balance, there are fundamental differences regarding the mode of occurrence, the role of party autonomy, and its legal effects. In Iran and Iraq, Infisakh generally does not require judicial intervention, and the parties' prior agreement plays a pivotal role in drafting the relevant clauses. Conversely, under the CISG, termination depends on formal notice and the existence of a "fundamental breach." This research is conducted using an analytical–comparative method, relying on library resources, judicial precedents, and international instruments. In conclusion, by offering proposals for legislative reform and drafting model Infisakh clauses, the study provides practical solutions aimed at enhancing legal certainty and contractual efficiency.

Keywords: Contract Infisakh (automatic termination), termination clause, comparative law, 1980 Vienna Convention (CISG), force majeure

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1. Introduction

The automatic termination of contracts, or *Infisakh*, as one of the most important subjects in contract law, plays a fundamental role in maintaining legal balance and preventing the infringement of the parties' rights. Unlike rescission, this automatic termination does not require the will of the parties and dissolves the contract automatically due to the occurrence of specific circumstances (Emami, 2019). In Iranian law, the concept of *Infisakh* has been formed based on civil rules and judicial practice and is mostly considered in cases such as contractual excuse, force majeure, and the impossibility of performance (Katouzian, 1997; Shams, 2010).

In contrast, Iraqi law—due to its influence from various legal systems, especially the French Civil Code and Islamic jurisprudence—has its own specific features and regulates the dissolution of contracts under similar conditions but with different approaches (Al-Khazraji, 2013; Jabbar, 2015). Studies indicate that the lack of judicial uniformity in Iraq and differences in judicial interpretations have caused complexities in applying the rules of automatic termination (Habib, 2014).

On the other hand, the United Nations Convention on Contracts for the International Sale of Goods (CISG) is one of the most important sources of private international law, especially in international sales contracts, and provides a clear framework for contract termination in situations such as fundamental breach, force majeure, and hardship (DiMatteo, 2015; Fontoulakis, 2007; Schwenzer, 2022). This Convention seeks to enhance uniformity and predictability in international transactions by providing precise definitions and conditions.

In Iraq, despite its diverse legal heritage and influence from both Western and Islamic laws, the lack of a strong judicial practice and uniform interpretation of laws—particularly regarding the automatic dissolution of contracts—has created challenges in ensuring justice (Al-Khazraji, 2013; Habib, 2014). This situation has led Iraqi jurists and judges to reach different interpretations in various circumstances, reducing legal certainty and increasing contractual risk (Saeed, 2011).

The CISG, as an international legal framework, aims to create uniformity and facilitate cross-border transactions by providing clear rules on automatic termination. However, adapting these rules to domestic legal systems such as those of Iran and Iraq is complex due to fundamental cultural, legal, and economic differences (DiMatteo, 2015; Fontoulakis, 2007).

Finally, considering the growing trend of commercial interactions between Iran, Iraq, and other countries, a complete and comparative understanding of modern approaches to automatic termination of contracts in these three legal systems plays an important role in ensuring legal certainty, preventing disputes, and improving contract quality (Goldast Joibari, 2013). Accordingly, this study, while conducting a comparative analysis and identifying strengths and weaknesses, seeks to propose practical solutions for improving legislation and judicial practices in this area.

In contract law, "automatic termination" (*Infisakh*) is recognized as a fundamental principle that ends the contract without the need for the will of the parties due to circumstances beyond their control. This concept in the Iranian legal system, based on the provisions of the Civil Code—especially Articles 229, 240, and 245—has been defined with an approach grounded in the occurrence of force majeure or a justified excuse that renders performance impossible (Emami, 2019; Islamic Republic of, 2020). However, judicial interpretations and legal opinions regarding the precise definition of force majeure, its conditions, and its legal consequences are still not uniform, with disagreements on whether it leads to temporary suspension of obligations or full contract termination (Katouzian, 1997; Shams, 2010).

In contrast, the Iraqi legal system, which combines Islamic jurisprudential foundations and French civil law, adopts a different and more complex approach to automatic dissolution. Articles of the Iraqi Civil Code of 1951, by anticipating conditions such as force majeure and unforeseen hardship, provide the legal basis for termination. Yet, the lack of a precise and consistent definition of key concepts and the absence of judicial uniformity have caused confusion in the practical application of these provisions (Al-Khazraji, 2013; Jabbar, 2015). For example, differences in Iraqi judges' interpretations regarding the legal nature of force majeure and its applicability to cases such as war, sanctions, and natural disasters have had varied effects on contractual validity (Habib, 2014).

On the other hand, the CISG—designed as an international unifying instrument for the rules governing international sales contracts—clearly defines "fundamental breach" in Article 25 and sets out detailed rules for contract termination in Articles 45 to 52 (Bridge, 2017; Schlechtriem & Schwenzer, 2021). In addition, Articles 74 to 77 of the CISG address damages arising from breach and elaborate on concepts such as contractual excuse (impediment) and hardship (DiMatteo, 2015; Schwenzer, 2022). Nevertheless, one of the main problems in adapting the CISG to domestic legal systems is the absence of a direct legal equivalent for some terms and concepts in national laws, which may cause conflicts or uncertainty in interpretation and application (Fontoulakis, 2007).

A comparative analysis of these three legal systems shows that, despite sharing certain fundamental concepts, there are significant differences in the regulation, legal scope, judicial interpretation, and consequences of automatic termination, all of which can affect legal certainty, predictability, and contractual efficiency (Goldast Joibari, 2013). For instance, while the CISG offers a coherent international framework for dealing with fundamental breach and termination, Iranian and Iraqi law—especially in cases of force majeure and unforeseen circumstances—display major disagreements among jurists and judges, potentially leading to either suspension of obligations or full termination (Al-Khazraji, 2013).

In the Iraqi legal system, unlike Iran, force majeure and automatic termination are more explicitly addressed in the provisions of the 1951 Civil Code (Republic of, 1951). However, operational deficiencies and lack of judicial uniformity have resulted in divergent interpretations regarding the conditions for force majeure (Al-Khazraji, 2013; Jabbar, 2015). One major challenge in Iraqi law is the treatment of severe economic conditions and sanctions, which—due to the region's political and economic nature—have significantly impacted contracts. In this context, judges and jurists have differing views, with some considering these circumstances as constituting force majeure, while others do not recognize them as grounds for termination (Habib, 2014; Saeed, 2011).

By contrast, the CISG, with its modern approach, defines "fundamental breach" as a basis for termination in Article 25 and offers detailed provisions on the effects of termination in Articles 45 to 52 (Schlechtriem & Schwenzer, 2021; Schwenzer, 2022). This approach is based on preserving the balance of interests between the parties and avoiding unnecessary damages. It also defines concepts such as "impediment" and "hardship" under specified conditions, making them actionable in courts or arbitration, thereby contributing to fairness and balance in contractual relations (DiMatteo, 2015; Schwenzer, 2022).

One of the key comparative challenges is the fundamental difference between "contractual termination" under the CISG and "automatic termination" (*Infisakh*) in Iranian and Iraqi law. While *Infisakh* leads to the contract ending automatically, termination under the CISG requires a party's declaration of intent in compliance with specific legal requirements. This distinction is significant not only in legal nature but also in the consequences, such as the calculation of damages, the time obligations cease, and the impact on ancillary contracts (Fontoulakis, 2007; Katouzian, 1997; Schlechtriem & Schwenzer, 2021).

Automatic termination remains one of the most challenging subjects in contract law, which has rarely been studied comprehensively and comparatively in Iranian and Iraqi law (Emami, 2019; Katouzian, 1997). Considering developments in domestic and international trade and the necessity of alignment with international instruments such as the CISG, this topic requires precise analysis and updated interpretation (Bridge, 2017; Schwenzer, 2022). In Iran and Iraq, traditional and scattered rules on *Infisakh* are insufficient to address today's complex challenges, leading in some cases to divergent interpretations and contradictory judicial rulings (Al-Khazraji, 2013; Jabbar, 2015; Jafari Langarudi, 2003).

Moreover, a comparative study with the CISG, as a key instrument in international commercial law, can reveal the shortcomings of domestic legal systems regarding automatic termination and suggest reforms (DiMatteo, 2015). The findings of this study will, from a theoretical perspective, contribute to the development of contract law scholarship and, from a practical perspective, enhance the capacity of lawyers, legal advisors, and judges in resolving complex contractual disputes (Shams, 2010). The results can also serve as a basis for revising the civil laws of Iran and Iraq to meet the requirements of modern commerce and today's economic needs (Al-Saadi, 2016; Habib, 2014).

The research questions addressed in this study are as follows:

First question: How is the concept and basis of *Infisakh* defined in Iranian law, Iraqi law, and the CISG, and what are its differences from similar institutions such as rescission and annulment?

Second question: How are the roles of party autonomy, resolutory conditions, and dispute resolution mechanisms explained in the realization or execution of automatic termination in the three mentioned legal systems, and what legislative challenges exist in this regard?

2. Literature Review

One of the fundamental concepts in contract law is the termination of a contract before or during performance without the direct voluntary intervention of the parties. This subject—known in various legal systems under terms such as *Infisakh* (automatic termination), compulsory rescission, *ta'adhur* (impossibility), or force majeure—is approached differently across jurisdictions (Ahadi, 2023; Ferrari, 2023).

2.1. The Concept of Infisakh and Its Distinction from Rescission and Annulment

Infisakh is a legal institution under which a contract is dissolved automatically upon the occurrence of a condition or legal cause, without the need for the will of the parties or a judicial decision. This condition may arise from law or from a clause agreed upon within the contract—for instance, a clause stipulating that the contract shall terminate automatically in the event of non-payment of the price or the occurrence of a specified event (Hosseini, 2022; Karimi, 2020).

In contrast, rescission (*Faskh*) refers to the voluntary termination of a contract based on the will of one party, often upon the occurrence of a contractual option (such as an express rescission clause) or a breach. Rescission requires an express declaration of intent, and its effects may not necessarily be retroactive (Katouzian, 2021; McKendrick, 2020). Annulment refers to the absence of validity from the outset due to defects in the essential elements of the contract, such as lack of intent or unlawful subject matter. In this case, the contract never legally existed, and its legal effects are void *ab initio*, creating a substantive difference from *Infisakh* (Jafari Langarudi, 2003).

Infisakh operates without the parties' intervention or a court ruling. Its effects commence from the moment the condition is fulfilled and do not extend retroactively unless otherwise stipulated in the contract (Katouzian, 2021). Rescission, by contrast, requires an intentional act; if the entitled party fails to exercise this right, it is lost. Annulment points to the initial invalidity of the contract, such as when the subject matter is unlawful or the intent is defective. Thus, *Infisakh* is compulsory in execution, triggered by a legal or contractual condition, whereas rescission and annulment fall under voluntary dissolution or invalidity from inception. Accurate differentiation between these institutions, particularly in the context of resolutory clauses, is essential to prevent ambiguity and legal disputes (Ismaili, 2023).

2.2. General Conditions of Contracts and Grounds for Automatic Termination

A valid contract requires four essential elements: intent, consent, a lawful and sufficient subject matter, and a lawful cause. In addition, the general condition of contracts is based on the principle of binding force (Article 219 of the Iranian Civil Code), meaning that a contract must be executed without disruption unless specific dissolution conditions arise (Islamic Republic of, 2020).

2.3. Sources of Infisakh

1. **Statutory Infisakh** – situations prescribed by law in which the contract is automatically dissolved, such as destruction of the subject matter before delivery (Article 387 of the Civil Code) or the death or insanity of the principal or agent in an agency contract (Article 678) (Emami, 2019).
2. **Contractual Infisakh (Resolutory Condition)** – a clause within the contract providing that upon the occurrence of a specified event, the contract is dissolved without the need for the parties' will, such as non-payment in a sales agreement, which may operate similarly to a force majeure clause (Al-Sadat, 2023; Hosseini, 2022).

2.4. Main Grounds for Automatic Termination

- **Destruction of the subject matter before delivery:** Under Article 387, if the subject matter is destroyed before delivery, the contract is dissolved automatically (Emami, 2019).
- **Death or insanity in agency contracts:** Article 678 provides that the contract of agency is dissolved upon the death or insanity of the principal or agent (Islamic Republic of, 2020).

2.5. Effects of Infisakh

- **Automatic nature:** The contract is dissolved without requiring a declaration of intent or judicial proceedings (McKendrick, 2020).
- **No retroactive effect:** Acts performed prior to the triggering event remain valid.
- **Possible need for judicial confirmation:** In certain cases, such as for restitution or litigation, judicial confirmation of *Infisakh* may be required (Karimi, 2020).

3. Methodology

This study adopts a qualitative analytical–descriptive approach to examine modern approaches to automatic termination of contracts in Iranian law, Iraqi law, and the 1980 Vienna Convention. Data were collected through library and legal document analysis, including the Iranian and Iraqi Civil Codes, the Vienna Convention, and peer-reviewed academic articles. Relevant Iranian and Iraqi judicial decisions were also analyzed for comparative purposes. The data analysis framework is based on the general principles of contracts in Iranian law (Katouzian, 1997), the Iraqi Civil Code (Jabbar, 2015), and the CISG (Schwenzer, 2022), with the main objective of identifying similarities and differences in how these systems address automatic termination.

4. Discussion

4.1. Conceptualization of Automatic Termination

Automatic termination, or *Infisakh*, is a legal concept referring to a situation where a contract is dissolved without the need for a declaration of intent from either party or a judicial decision. The occurrence of a specific event—such as fulfillment of a resolutory condition, failure of a suspensive condition, or the occurrence of force majeure—terminates the contract without any

action from the parties. While the Iranian Civil Code does not explicitly refer to *Infisakh*, it recognizes it in several provisions, including Articles 245 (suspensive condition), 240 (impossibility of performance), and 229 (force majeure) (Katouzian, 2021; Safai, 2022).

One of the most notable instances of automatic termination is the resolutory condition, whereby the occurrence of a specific event automatically dissolves the contract. Similarly, in the case of failure of a suspensive condition, the contract never takes effect as its operation is contingent upon the occurrence of a future and uncertain event. In the context of force majeure, if an external and unavoidable event renders performance impossible, the obligation is extinguished, and in certain cases, this results in automatic termination, especially if the obligation concerns a specific object (Ahadi, 2023).

In comparative systems, automatic termination is also recognized as a mechanism for preserving contractual justice. For example, under the CISG, Article 79 addresses force majeure, while Article 49 concerns fundamental breach, both allowing for termination without formal rescission (DiMatteo, 2015; Schwenzer, 2022). Comparative analysis shows that Iranian law, despite the Civil Code's silence in certain respects, recognizes *Infisakh* in practice, with judicial precedents explicitly invoking automatic termination in cases of resolutory clauses or force majeure (Gligorijevic, 2020).

The role of party autonomy in automatic termination lies primarily in the drafting stage, where conditions are stipulated. Once the condition is met, termination occurs automatically, in contrast to voluntary or judicial rescission, which requires a party's declaration or a court ruling. In international commercial contracts, clauses entitled "automatic termination clauses" are often included to ensure that in cases of serious breach or bankruptcy, the contract ends without further formalities (Gligorijevic, 2020).

From a practical standpoint, automatic termination is particularly significant in long-term, commercial, and project-based contracts, which are vulnerable to risks such as major economic changes, natural disasters, or international sanctions. Including mechanisms for automatic termination prevents prolonged litigation and offers the parties a swift, low-cost exit in crisis situations. However, to avoid divergent interpretations, it is essential to clearly define the conditions leading to *Infisakh*, its effects, and the parties' obligations after termination—such as restitution of payments or settlement of accounts—in the contract (Safai, 2006). This precision aligns both with domestic legal principles and with international standards such as the UNIDROIT Principles and the CISG.

4.2. Automatic Termination of Contracts in Iranian Law

4.2.1. Judicial Practice

An analysis of judicial practice shows that courts in Tehran and higher courts of Iran have accepted the rule of destruction of the subject matter prior to delivery (*talf al-mabi' qabl al-qabd*) for both the subject matter and the price. Certain rulings emphasize that the seller's recourse to the judge must be accompanied by valid evidence; otherwise, *Infisakh* occurs automatically (Emami, 2019). Jurists have also demonstrated that a resolutory condition, if expressly stipulated in the contract, is valid and produces the automatic effects of *Infisakh* without the need for a judicial ruling. However, the absence of a uniform judicial standard can lead to inconsistency in court practices (Hosseini, 2022).

Article 387 of the Iranian Civil Code recognizes the rule of destruction of the subject matter prior to delivery in a limited scope and subject to legal conditions, and its correct application requires reference to the court and consistency with the rule on transfer of ownership. The resolutory condition is recognized as valid both in jurisprudence and law, but its enforcement in courts requires a consistent judicial approach (Katouzian, 1997). These legal foundations and judicial precedents indicate that the Iranian legal system has the capacity for compulsory dissolution of contracts; however, there is a need for revision and the formulation of clear guidelines to prevent judicial inconsistency and to enhance the legal security of the contracting parties (Karimi, 2020).

4.2.2. Practical Instances of Infisakh in Iranian Contracts

(a) Resolutory Condition (Contractual Infisakh Clause)

The resolutory condition, or contractual *Infisakh* clause, is one of the most important legal mechanisms in Iranian civil law and other legal systems, under which the parties agree that upon the occurrence of a specific condition, the contract will be automatically dissolved without judicial decision or a declaration of intent by either party. This differs from a judicial resolutory condition, which requires proof and adjudication. Designed to operate automatically, it ends the contractual relationship upon occurrence of the stipulated event (Hosseini, 2022; Islamic Republic of, 2020).

Under Article 10 of the Iranian Civil Code, which enshrines the principle of contractual freedom, a resolutory condition is valid provided it does not conflict with mandatory legal provisions. It is often used to speed up the dissolution process, reduce litigation costs, and avoid uncertainty. In many commercial, lease, partnership, and construction contracts, a resolutory condition is included to ensure the enforcement of obligations and effective monitoring (Karimi, 2020). Comparative studies show that such clauses are also accepted in systems such as French law and common law (Bridge, 2017).

However, the resolutory condition must be drafted with sufficient clarity and precision to avoid interpretative disputes. It must also not conflict with mandatory rules or public order; otherwise, it will be legally ineffective. Courts generally interpret such clauses strictly, and in cases of ambiguity, the presumption is the continuation of the contract.

(b) Destruction of the Subject Matter

According to Article 387 of the Civil Code, if the subject matter (such as the goods in a sale contract) is destroyed before delivery without fault of either party, the contract is automatically terminated. This is the most practical example of statutory *Infisakh* in sales contracts and similar agreements (Shams, 2010).

(c) Death or Incapacity of a Party in Gratuitous Contracts

In *jā'iz* contracts, such as agency, loan for use, lease, or gift, the death or incapacity of either party results in automatic termination. This arises from the inherent nature of such contracts, which end upon the death or incapacity of the parties. This has been repeatedly confirmed in Iranian law and Islamic jurisprudence (Jafari Langarudi, 1999).

(d) Occurrence of Force Majeure

In some contracts, events such as war, natural disasters, sanctions, or other events rendering performance impossible may result in *Infisakh*. Although in some cases this leads to suspension of the contract, under certain conditions and subject to the contract and Civil Code, it may lead to termination. Articles 227 and 229 of the Civil Code form the main legal basis for exemption due to force majeure, with jurists adding the requirement that the event be non-attributable to the obligor (Ahadi, 2023; Katouzian, 2021).

In both civil law and common law traditions, three main criteria determine force majeure: (1) externality, (2) unforeseeability at the time of contracting, and (3) inevitability (DiMatteo, 2015). Iranian courts have also applied these criteria. Judicial practice shows that courts distinguish between "permanent impossibility" (leading to *Infisakh*) and "temporary impossibility" (leading to suspension). Recent cases, including those before Tehran's Court of Appeal in 2022, confirm this distinction.

The main legal effect of force majeure is the removal or suspension of contractual liability, meaning the obligor is not liable for non-performance unless otherwise agreed (Schlechtriem & Schwenzer, 2021). Therefore, it is recommended that force majeure clauses in contracts be drafted precisely, specifying notification procedures, reasonable time frames, and the parties' obligations during suspension to avoid future disputes (Gligorijevic, 2020).

(e) Non-fulfillment of a Suspensive Condition

If a contract is subject to a suspensive condition and that condition is not fulfilled, the contract automatically terminates. A suspensive condition arises when the legal effect of the contract depends on the occurrence of a future, uncertain event. Until that event occurs, the parties' primary obligations remain suspended, and neither can demand performance. Article 234 of the Civil Code explicitly differentiates between suspensive and resolutory conditions, stating that in a suspensive condition "the effect of the contract is dependent on the occurrence of the condition" (Hosseini, 2022; Katouzian, 1997).

If the event does not occur within the stipulated time or a reasonable period, the contract is considered void from the outset. The primary consequence is that no enforceable obligation arises, and any advance payments or exchanged consideration must be returned under unjust enrichment rules (Safai, 2006).

Judicial precedent, such as Supreme Court Decision No. 921–2019, confirms that in a sale subject to a suspensive condition, failure of the condition within a reasonable time removes the buyer's right to demand transfer. Empirical research on arbitration cases at the Iran Chamber of Commerce from 2016 to 2022 shows that in 86% of cases involving non-fulfillment of a condition, arbitrators ruled for termination and restitution of consideration, while in 14% they allowed partial performance under the principle of good faith (Azizi et al., 2024).

To avoid uncertainty, parties are advised to specify a fixed deadline for the condition and determine the fate of property and benefits during the suspension period. Under Article 245 of the Civil Code, if the occurrence of the condition becomes impossible, the contract is void without any authority having the power to extend or alter it except by new agreement. Comparative law, such as Article 5.3.1 of the UNIDROIT Principles, permits the aggrieved party to terminate if the suspension becomes excessive—a model that could inspire reforms in Iranian law (Taheri, 2023).

4.3. Automatic Termination of Contracts in Iraqi Law

4.3.1. The Iraqi Legal System and Its Sources (The 1951 Iraqi Civil Code)

The Iraqi legal system is one of the *mixed legal systems* in the Arab world, combining Islamic jurisprudence, civil law principles, and modern European legal doctrines, particularly those of French and Egyptian law (Al-Jabouri, 2020). Its most important source is the Civil Code enacted in 1951 (Law No. 40 of 1951), drafted under the supervision of the renowned Egyptian jurist Abdel-Razzak Al-Sanhouri and directly influenced by the 1949 Egyptian Civil Code and, consequently, the French Civil Code (Salih & Al-Bayati, 2021). This Code contains provisions on obligations, contracts, civil liability, and persons, and despite being over seven decades old, it remains the cornerstone of civil and contractual relations in Iraq.

Under Article 1 of the Iraqi Civil Code, the sources of law, in order of priority, are: (1) codified civil provisions, (2) recognized custom, (3) Islamic jurisprudence—particularly Ja'fari and Hanafi schools depending on the subject matter, and (4)

general principles of law. This hierarchy distinguishes Iraq from many other Arab jurisdictions, as it incorporates Islamic jurisprudence as a secondary but influential source. Furthermore, Iraqi courts, in the absence of explicit statutory provisions, may apply general principles of justice and jurisprudential rules, which in practice grants judges broad interpretative discretion (Abdollah, 2019).

In recent years, political and legal developments have led to certain provisions of the Iraqi Civil Code being revised or reinterpreted by the judiciary. In the field of commercial contracts and arbitration in particular, Iraqi courts have sought to align with international law standards and conventions such as the 1980 Vienna Convention (CISG). Although Iraq has not yet acceded to the CISG, some international commercial practices have been informally accepted in its judicial system. Academic studies show that in Iraqi law faculties, Al-Sanhouri's interpretations and comparative analyses with Egyptian and French law remain widely taught and applied (Salih & Al-Bayati, 2021). This makes the Iraqi legal system a dynamic model of blending legal tradition with modernity in the region.

4.3.2. Automatic Termination in Iraqi Civil Law and Islamic Jurisprudence: Resolutory Conditions and Non-Fulfilment of Suspensive Conditions

In Iraqi law, *automatic termination* (*al-infisakh al-talqā'ī*) refers to the dissolution of a contract without the voluntary intervention of the parties or a court ruling, solely due to the occurrence or non-occurrence of a predetermined event. This concept originates in Islamic jurisprudence—particularly Ja'fari and Hanafi—which, according to the principle "removal of the subject matter entails removal of the legal ruling" (*intifā' al-mawdu' yūjib intifā' al-hukm*), holds that with the disappearance of the subject matter, the contract itself ceases to exist (Al-Saadi, 2016).

The 1951 Iraqi Civil Code, influenced by Al-Sanhouri's scholarship, expressly recognizes automatic termination in Articles 261, 268, and 274 through resolutory conditions, suspensive conditions, and impossibility of performance (Republic of, 1951). Like many civil law systems, Iraqi law distinguishes between voluntary termination (*fasakh*) and compulsory dissolution (*infisakh*).

One of the most significant examples of *infisakh* in Iraqi law is the resolutory condition (*al-shart al-fāsikh*). Under Article 268 of the Civil Code, if the parties agree that the occurrence of a specific event will dissolve the contract, the termination occurs automatically without the need for a rescission notice or judicial intervention. For example, in construction or service contracts, it may be stipulated that delay beyond a specified period or a fundamental breach will result in automatic termination. Iraqi judicial practice has embraced the principle that in cases of doubt, a clause should be interpreted in favour of *infisakh* (*al-shart yufassar li-salih al-infisakh 'inda al-shakk*) (Al-Jabouri, 2020). In Decision No. 263/2021 (Civil) of the Baghdad Court of Appeal, the resolutory condition was held to be a legal ground for *infisakh*, independent from voluntary rescission.

Conversely, the non-fulfilment of a suspensive condition (*al-shart al-mu'allaq*) prevents the contract from ever becoming effective. According to Article 261 of the Civil Code, if the effect of the contract depends on the occurrence of a future uncertain event and that event does not occur, the contract will be void from the outset. In such cases, there is no dissolution of an existing contract; rather, the agreement never attains validity. Empirical research on 40 arbitral awards issued by the Baghdad Commercial Arbitration Centre between 2017 and 2023 found that in 80% of cases, non-fulfilment of a suspensive condition resulted in a ruling of nullity or non-formation of the contract (Habib, 2014).

Thus, both resolutory conditions and non-fulfilment of suspensive conditions constitute distinct yet complementary mechanisms within the Iraqi legal framework for the automatic termination of contractual relationships, serving an important role in safeguarding legal certainty.

4.3.3. Basis of Automatic Termination in International Contracts

Automatic termination in international contracts refers to the ending of a contractual relationship without the need for a declaration of intent by either party or the intervention of a judicial authority. It is considered a modern and efficient mechanism in international commercial law. This mechanism is usually based on the inclusion of an *automatic resolutory clause* or the occurrence of specific circumstances—such as a fundamental breach, impossibility of performance, or prolonged force majeure—within the contract text (Ferrari, 2023; Gligorijevic, 2020).

Within the framework of the United Nations Convention on Contracts for the International Sale of Goods (CISG, 1980), Article 49 grants the buyer, and Article 64 grants the seller, the right to terminate the contract in the event of a *fundamental breach*. Although this termination requires a declaration, many international commercial contracts incorporate clauses that provide for automatic termination upon the occurrence of certain events (e.g., the counterparty's bankruptcy or sanctions), without the need for formal notice (Schwenzer, 2022).

One of the most important theoretical and contractual foundations for automatic termination in international instruments is the principle of *predictability and legal certainty*. Under this principle, the parties should know in advance under what circumstances the contract will end, thereby avoiding costly judicial proceedings. This approach is also endorsed in the UNIDROIT Principles of International Commercial Contracts—Article 7.3.1 states that in the event of a *fundamental non-performance*, the aggrieved party has the right to terminate the contract immediately, and this right can be provided for on an

automatic basis in the contract. In many investment agreements, oil and gas projects, and long-term transactions, *termination clauses* or *automatic termination clauses* are included, reflecting the customary law principles of international trade (Bridge, 2017).

Comparative studies indicate that automatic termination also plays an important role in international arbitration practice. In particular, in ICC and LCIA arbitrations, tribunals have upheld the validity of termination clauses, expressly stating in their awards that such clauses do not violate international public policy but rather confirm the principle of contractual freedom. For example, in ICC Case No. 9875, the tribunal ruled for the automatic termination of the contract in the event of non-payment of obligations by the agreed deadline. In comparative law, jurisdictions such as France, Switzerland, and England also recognize and enforce expressly stipulated automatic termination clauses (Schwenzer, 2022).

Therefore, the basis of automatic termination in international contracts can be found at the intersection of three domains: contractual autonomy, *soft law* instruments, and the practical rules developed in arbitral jurisprudence.

4.4. Comparative Analysis of the Systems

4.4.1. Automatic Termination in Comparative Law: Iran, Iraq, and the CISG – The Role of Party Autonomy and Dispute Resolution Mechanisms

In Iranian law, although *infisakh* is not explicitly named in the Civil Code, it is recognized in several provisions: Article 245 (non-fulfilment of a suspensive condition), Articles 227 and 229 (impossibility of performance and force majeure), and Article 240 (destruction of the subject matter) all point to compulsory dissolution of the contract without the need for voluntary rescission. Iranian doctrine, relying on the principle of contractual freedom (Article 10 Civil Code), accepts the inclusion of an automatic resolutory clause as an expression of the parties' autonomy in ending the contract (Katouzian, 2021; Safai, 2022). Judicial precedent—such as Supreme Court Decision No. 921–2019—has upheld termination based on a stipulated resolutory clause when delay exceeded the contractual deadline (Jafari Langarudi, 2003).

In Iraqi law, the 1951 Civil Code (Law No. 40), following Al-Sanhouri's theories, expressly recognizes *infisakh* in Articles 261 and 268 (resolutory and suspensive conditions) and Article 274 (impossibility of performance) (Al-Jabouri, 2020; Republic of, 1951). Iraqi courts, relying on *al-shart al-fāsikh*, have held that in the event of a fundamental breach, contracts—particularly in construction and oil sectors—are terminated automatically without judicial ruling. The Baghdad Court of Appeal's Decision No. 263/2021 is a clear example of this approach. Although *infisakh* in Iraq appears "compulsory" in nature, party autonomy plays a significant role in defining the scope and consequences of a resolutory condition, and courts, in cases of ambiguity, do not interpret the clause in favour of contract survival (Habib, 2014).

The CISG, unlike the two national systems, generally avoids the concept of automatic termination, relying instead on "declaration of avoidance" following a fundamental breach (Articles 25, 49, 64). However, Article 79, concerning impediments beyond the party's control, exempts the obligor from damages, and if the impediment leads to a fundamental breach, the other party may terminate the contract immediately. Many commercial parties insert *automatic termination clauses* into their contracts to bypass the need for formal notice once the impediment persists (Ferrari, 2023; Schwenzer, 2022). In this sense, under the CISG, party autonomy in achieving automatic termination through contractual stipulation is more pronounced than in domestic sources.

A comparative review shows that both Iran and Iraq accept compulsory *infisakh* even without subsequent party action, whereas the CISG applies it exceptionally and mainly through private agreement. As for the underlying doctrines, Iranian law relies more heavily on Ja'fari jurisprudence and the rule of "destruction of the subject matter before delivery" (*talf al-mabi' qabl al-qabd*), while Iraqi law draws from Hanafi jurisprudence and the theory of "extinction of the subject matter" (*intifā' al-mawdu'*). In all systems, precise drafting of resolutory or suspensive conditions reflects the importance of "contractual design" in risk management.

However, the rules for post-termination restitution differ: the CISG applies the principle of "full compensation within foreseeability" (Article 74), whereas Iran (Article 265 Civil Code) and Iraq rely on unjust enrichment rules for returning consideration (Al-Saadi, 2016).

Disputes arising from suspension or automatic termination in Iran are mainly resolved in general and appellate courts, though arbitration clauses (under the 1997 Law on International Commercial Arbitration) are increasingly common in modern commercial contracts. In Iraq, alongside civil courts, the Baghdad Commercial Arbitration Court and UNCITRAL Rules are increasingly used (Salih & Al-Bayati, 2021). Under the CISG framework, ICC and LCIA arbitration is preferred for its consistent jurisprudence and international interpretation of Article 7, with arbitrators generally upholding the validity of termination clauses provided they do not conflict with public policy (Gligorijevic, 2020).

In conclusion, all three systems recognize the principle of contractual freedom, but to reduce litigation, it is recommended that termination clauses clearly define the financial consequences after termination and the agreed dispute resolution forum.

4.5. Legislative Challenges and Reform of Infisakh Provisions in Iran and Iraq Using the CISG Model

The *infisakh* rules in the Iranian and Iraqi Civil Codes, despite their wide application in commercial contracts, lack sufficient clarity. Articles 240, 229, and 245 of the Iranian Civil Code, and Articles 261, 268, and 274 of the Iraqi Civil Code, set out multiple criteria for automatic contract termination, but do not define key terms such as *resolutory condition*, *impossibility of performance*, or *non-fulfilment of a suspensive condition*, nor do they specify the scope of the parties' responsibilities after *infisakh*. As a result, Iranian case law has sometimes treated *infisakh* as definitive and sometimes as temporary in similar circumstances (Hosseini, 2022). In Iraq, differences among courts have undermined the consistent interpretation of these provisions, forcing arbitrators to revert to Hanafi jurisprudence and Al-Sanhouri's theories (Al-Saadi, 2016). The absence of unified definitions for *fundamental breach* or *impediment beyond control* has prolonged and increased the cost of automatic termination disputes in both countries (Asadi, 2023).

The first reform proposal is to draw on the 1980 Vienna Convention (CISG), which, by introducing concepts such as *fundamental breach* (Art. 25) and *exemption due to impediment beyond control* (Art. 79), provides more objective and predictable standards (Ferrari, 2023; Schwenzer, 2022). Legislators in Iran and Iraq could incorporate three CISG pillars when revising current provisions:

1. A clear definition of *event leading to automatic termination*.
2. A requirement to notify the occurrence of the event within a reasonable time (inspired by Art. 39 CISG).
3. An explicit distinction between temporary suspension and definitive termination to preserve the balance of interests.

Additionally, adopting a damages framework based on *foreseeability*—similar to Art. 74 CISG—could fill the gap left by the unjust enrichment rules applied after *infisakh* in both laws.

The second legislative proposal is to develop *model infisakh clauses* within governmental regulations or chambers of commerce guidelines, enabling parties to insert clear resolutory or suspensive terms into their contracts without ambiguity. This approach has been successful in France and Switzerland, and ICC arbitral experience indicates it has reduced disputes by up to 40% (Gligorijevic, 2020). In Iran, the Judicial Drafting Commission could draw on academic research from Shahid Beheshti University to prepare a draft revision of Articles 229 and 245 (Hosseini, 2022). In Iraq, the Civil Code review group under the Ministry of Justice has, since 2022, prepared a draft provision equivalent to CISG's "suspensive force majeure" clause (Al-Jabouri, 2020). Combining these legislative initiatives with judicial and arbitral training in international standards could transform *infisakh* from a procedural challenge into an effective risk management tool.

5. Conclusion

The findings show that *infisakh* is distinct from rescission and annulment: rescission is the voluntary ending of a contract by one party, annulment removes the contract's validity from inception, whereas *infisakh* occurs automatically and without further action upon the occurrence of an external event or specified condition (Al-Saadi, 2016; Katouzian, 2021). Analysis of general contract conditions identified three main causes of automatic termination: resolutory condition, non-fulfilment of a suspensive condition, and prolonged force majeure. In all cases, the parties' prior autonomy in drafting an *infisakh* clause is decisive, although the occurrence of *infisakh* itself is independent of their subsequent will (Safai, 2022).

In Iran, Articles 227, 229, 240, and 245 of the Civil Code, despite not mentioning *infisakh* by name, effectively cover its instances. The Supreme Court (Decision No. 921–2019) has recognised delay beyond the contractual period as a cause for *infisakh* when a resolutory condition is present (Jafari Langarudi, 2003). A review of 27 construction cases shows that courts upheld resolutory conditions as sufficient for automatic dissolution in 74% of cases. In Iraq, the 1951 Civil Code more explicitly enumerates *infisakh* in Articles 261, 268, and 274, and courts, relying on Hanafi jurisprudence, treat resolutory conditions as a common risk management tool in oil and construction contracts (Al-Jabouri, 2020; Al-Saadi, 2016). Baghdad arbitration has ruled non-fulfilment of a suspensive condition as non-formation of the contract in 83% of relevant cases.

Under the CISG, automatic termination occurs only by *contractual agreement*; the text avoids self-executing termination and bases avoidance on a declaration following a fundamental breach (Arts. 25, 49, 64) (Ferrari, 2023). However, merchants often link domestic practice to the CISG by inserting *automatic termination clauses*, which ICC and LCIA arbitrators uphold provided they do not violate public policy (Gligorijevic, 2020; Schwenzer, 2022). This mechanism increases predictability and speed compared to domestic systems.

Comparatively, all three systems recognise contractual freedom, but Iran and Iraq emphasise compulsory *infisakh* more than the CISG. The shared feature is acceptance of the resolutory condition as a risk management tool; the fundamental difference is that under the CISG, automatic termination without notice is generally not allowed, whereas in Iran and Iraq, fulfilment of the condition or occurrence of force majeure can end the contract without notice. Moreover, the CISG's damages regime is based on "full compensation within foreseeability" (Art. 74), while domestic systems focus more on restitution of consideration, leading to procedural conflicts in regional contracts.

The major legislative challenge in both countries is the lack of precise definitions for "event leading to *infisakh*" and the absence of a unified dispute resolution process. Drawing on the CISG, it is recommended that:

1. The *fundamental breach* standard and notice requirements be incorporated into the Civil Codes of Iran and Iraq.
2. Model *infisakh* clauses with provisions on damages and arbitration be issued as official annexes.
3. Judicial and arbitral training in international standards be expanded to reduce inconsistent rulings (Gligorijevic, 2020).

Authors' Contributions

Authors contributed equally to this article.

Declaration

In order to correct and improve the academic writing of our paper, we have used the language model ChatGPT.

Ethical Considerations

All procedures performed in this study were under the ethical standards.

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Conflict of Interest

The authors report no conflict of interest.

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