Under positive international law in the past centuries, hostilities could not commence between two or more States without clear warning in the form of a declaration of war stating the reasons therefor or of an ultimatum with a conditional declaration of war. Once that requirement had been met, a state of war formally existed between the States. The principle of a compulsory declaration of war has now fallen into disuse. In practice and under customary law, a declaration of war is no longer necessary for a state of war to exist; it suffices for one of the parties to make its intentions clear by actually commencing hostilities. Similarly, a formal declaration of war is not necessary for the application of international humanitarian law.

OUTLINE

Chapter 2, III., 1., a) IAC [1]

LEGAL SOURCE

not essential to application of GCs and PI

GC common 2/1 [2] (see ICRC updated Commentary [3])

PI, 1/3 [4]