national Law and by the Japanese Branch of the International Law Association in 1926.

League of Nations Code

The first major attempt to secure international approval for a codification of diplomatic privileges and immunities never reached the final stages of preparation. In 1925, under the auspices of the League of Nations a committee of experts selected diplomatic privileges and immunities as one of 11 subjects which it considered could be usefully codified. Subsequently, questionnaires were sent to member governments requesting their views on most of these subjects. However, in 1927 the Assembly of the League retained only 3 subjects — nationality, responsibility of states and territorial waters — as topics suitable for codification at the first conference for the Codification of International Law which met at the Hague in 1930. The Assembly concluded that it would be difficult to reach universal agreement on diplomatic intercourse and immunities and that it was not "important enough to warrant insertion in the agenda of the proposed conference"[1].

Theories of Immunity

One of the theories used to explain diplomatic immunity during its most rapid period of development in the sixteenth and seventeenth centuries was the theory of extra-territoriality. According to this theory, the foreign ambassador, although resident within the territory to which he was accredited, was not subject to local jurisdiction. Later writers, including Hugo Grotius, recognized the doctrine of extra-territoriality as merely a convenient way to describe the status of the ambassador, and were at pains to stress that the "fiction of extra-territoriality" was not based on law but rather on a philosophical notion.

There are, in fact, two principal theoretical bases for the privileges and immunities of a diplomat. One is the so-called functional theory that a diplomat ought to be at liberty to devote himself fully to the service of his own sovereign. The second basis is that the diplomat owes no allegiance to the state to which he is sent and is therefore not subject to the laws of that state. This theory encompasses the notion that to subject an ambassador to the authority of the state receiving him is tantamount to an indignity toward the sovereign he represents.

Privileges and Immunities in Canadian Law

As the opening of foreign diplomatic missions in Ottawa is still very recent Canadian history, the first being the United States, France and Japan in 1929, Canadian courts have had few occasions to consider questions of diplomatic privileges and immunities. The leading cases are the *Foreign Legations Case* (1943)[2] and the *Rose Case* (1947)[3]. The primary question with which the courts were confronted was the application of customary international law in Canada,

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[1] U.N. Doc. A/C.N. 4/98, 21 February 1956, p. 17.
[2] (1943) 2 D.L.R., p. 481.
[3] (1947) 3 D.L.R., p. 640.