located on the territory of another state is such as to require prior restraint by that state. The challenge is brought most sharply into focus around conduct that may be regarded as supportive of armed action by a nonstate actor but stops short of being an essential part of any attack planning.

Principle 13, grappling with what is meant by "consent," is another accepted point of controversy. The proposition that "[t]he relevant consideration is that it must be reasonable to regard the representation(s) or conduct as authoritative of the consent of the state on whose territory or within whose jurisdiction the armed action in self-defense will be taken," seems right and sensible. The challenge that arises, however, as in the case of the debate over Pakistan's consent to U.S. drone strikes on its territory, is how to reliably determine consent (with appropriate transparency) in circumstances in which the territorial state gives consent privately but denies it publicly, or denies consent publicly but acts permissively and authoritatively in private. These are not issues that admit of easy resolution, particularly against the backdrop of real, demonstrable, and serious threats.

This leaves the three savings clauses, principles 14–16. Of all the principles, I would not have expected these provisions to have attracted comment as such formulations are relatively common in exercises such as this one. Some have seen conspiracy here, however, as if there is either insufficient elevation of the UN Charter hidden in savings clauses or hidden backdoors to military action. The law on state responsibility may, of course, apply in the types of circumstances in contemplation, including principles of attribution, those relevant to circumstances precluding wrongfulness, and perhaps others as well.

Further analytical work around these issues would be useful. One of the comments, for example, queried the intent of the reference in principle 15 to the "imperative interests" of a state that may be the target of an imminent or actual attack. On this point, an issue discussed with those engaged on this project and that resulted in some disagreement—although not on the latitude to act but only on the legal base permitting it—was armed action in defense of nationals abroad. Some states take the view that this issue is a subset of the law on self-defense and that they would therefore be permitted to act in self-defense in certain circumstances in which their nationals come under attack abroad. Others, however, reject a self-defense basis for such action but take the view that the state responsibility principles of "necessity" or "distress" would operate to preclude the wrongfulness of a rescue action of the same character. The principles did not endeavor to resolve this disagreement, hence the savings clause.

This comment is necessarily only a brief response to those published in the *Journal*'s pages. I hope, however, that these exchanges are only the start of a wider debate.

THE FRANCIS DEÁK PRIZE

The Board of Editors is pleased to announce that the Francis Deák Prize for 2012 was awarded to Robert D. Sloane for his article entitled *On the Use and Abuse of Necessity in the Law of State Responsibility*, which appeared in the July 2012 issue.

The prize was established by Philip Cohen in memory of Dr. Francis Deák, an international legal scholar and lifelong member of the American Society of International Law, to honor a younger author who has published a meritorious contribution to international legal scholarship in the *American Journal of International Law.*