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REVIEW OF BOOKS

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DIETER FLECK (ed.), *The Handbook of International Humanitarian Law*, 2nd ed., Oxford, Oxford University Press, 2008 (*Natalino Ronzitti*); RUDOLF DOLZER and CHRISTOPH SCHREUER, *Principles of International Investment Law*, Oxford, Oxford University Press, 2008 (*Giorgio Sacerdoti*); ANDREAS L. LOWENFELD, *International Economic Law*, 2nd ed., Oxford, Oxford University Press, 2008 (*Giorgio Sacerdoti*); TOM FARER, *Confronting Global Terrorism and American Neo-Conservatism. The Framework of a Liberal Grand Strategy*, Oxford/NewYork, Oxford University Press, 2008 (*Pietro Gargiulo*); ANDREA BIANCHI and ALEXIS KELLER (eds.), *Counterterrorism: Democracy's Challenge*, Oxford/Portland, Hart Publishing, 2008 (*Rory Stephen Brown*); FRANCESCO FRANCONI (ed.) (with the assistance of FEDERICO LENZERINI), *The 1972 World Heritage Convention. A Commentary*, Oxford, Oxford University Press, 2008 (*Sabrina Urbinati*).

BOOKS RECEIVED

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