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*Fairness in International Climate Change Law and Policy*, by Friedrich Soltau  
Cambridge University Press, 2011, 304 pp, £24.99 pb, ISBN 9781107402645

*Climate Governance at the Crossroads: Experimenting with a Global Response after Kyoto*,  
by Matthew J. Hoffmann  
Oxford University Press, 2011, 240 pp, £30 hb, ISBN 9780195390087

Since the problem of climate change achieved prominence on the international scene over two decades ago, countries have been striving to reach agreement on how to effectively address the problem. However, many agree that the key international instruments – the United Nations Framework Convention on Climate Change (UNFCCC)<sup>4</sup> and its Kyoto Protocol<sup>5</sup> – have fallen well short of this goal. But countries have not given up. Negotiations are ongoing on how to address climate change, including how to mitigate the problem.

It is in this context that the two books being reviewed here were written. The books are fundamentally different although in some respects similar. In his book, Soltau focuses on the multilateral treaty-making system and efforts to address climate change within this system. In turn, Hoffmann argues that, because of the lack of success of the multilateral treaty-making system, we should focus our attention on activities by a variety of actors outside the multilateral system.

Soltau's book emphasizes the crucial role of fairness in directing the efforts of countries to address climate change. Fairness will determine how the burden of addressing climate change will be assigned among countries; it will also determine whether some countries (and which ones) require assistance to deal with the inevitable consequences of climate change. Soltau rejects the so-called realist view that under the climate change regime what matters is 'willingness to pay', with fairness being only a secondary consideration. He asserts that 'a fair distribution of benefits and burdens is at the heart of the matter' and that countries are more likely to adopt and implement an agreement they perceive as fair and equitable (pp. 3, 5).

The key question then is 'what is fairness?' Soltau does not try to answer this question. Instead, he simply outlines the various definitions or descriptions of fairness that have been applied in international environmental law generally and under the climate change regime in particular. He identifies four fairness principles – equality or egalitarianism, responsibility or contribution, need, and capability – and discusses these as options for forming a working consensus on the meaning of fairness under the climate change regime. Regarding the latter, Soltau highlights the principle of common

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<sup>4</sup> New York, NY (US), 9 May 1992, in force 21 Mar. 1994, available at: <http://unfccc.int>.

<sup>5</sup> Kyoto (Japan), 11 Dec. 1997, in force 16 Feb. 2005, available at: [http://unfccc.int/kyoto\\_protocol/items/2830.php](http://unfccc.int/kyoto_protocol/items/2830.php).

but differentiated responsibilities as giving effect to equity and fairness in international environmental law (p. 187) and as a key principle of the climate change regime (pp. 192–3).

Chapter 6 examines several innovative proposals that have been made for allocating the burden of addressing climate change. It makes for very interesting reading, although it is perhaps too short given that this chapter contains the essence of the book; it is packed with information that would have benefited from in-depth examination across several chapters. Again, Soltau does not select any single proposal as an ideal option for achieving distributive fairness among countries. Instead, he analyzes the proposals and provides some good food for thought regarding the political acceptability, effectiveness and perceived fairness of the proposals. His only conclusion is that the proposals that are most likely to be accepted and implemented by both developed and developing countries are those that balance fairness with the political and economic realities of, among other things, economic recession and the desire of countries for cost-effective solutions.

Soltau's book is certainly a useful reference on the need for, and possible elements of, fairness in the climate change regime. However, the book would have benefited from a greater focus on fairness under the climate change regime and an expanded analysis of the issue; the first half of the book is dedicated to the science of climate change and the history of the climate change regime, information which is already very familiar to the climate change community and only has passing relevance to the focus of the book. Soltau could have made a much greater contribution to the literature on the topic if he had either included a definition of 'fairness' under the climate change regime, or at least identified what elements should (not just could) ideally be considered in order to reach a fair and legitimate climate agreement. Nevertheless, the book contains a useful analysis of the pros and cons of some proposals for what the future climate regime should be, including an analysis of their fairness underpinnings.

Rather than looking at what countries are or should be doing to address climate change as dictated by a multilateral treaty, Hoffmann's book focuses on initiatives by a variety of state and non-state actors outside the multilateral treaty system. He refers to these initiatives as 'governance experiments', being innovations that deviate from the traditional 'megamultilateralism' that has so far been seen under the climate change regime but has not yielded the desired results (p. 27).

Hoffmann identifies a fascinating array of experiments (58 in total) and provides a more detailed analysis of a selection of them. In so doing, he chronicles how much action is really being taken to address climate change, showing that despite the stalemate in the international treaty-making process, all hope is not lost. He therefore regards the book as a 'call to think differently about climate governance'. He argues against regarding a global all-encompassing agreement on climate change as the single vehicle for addressing climate change. Instead, there is a need to acknowledge that there are several means which, if all utilized jointly, will move the world that much closer to solving the climate change problem (p. 152).

One important element of the book is its discussion on the impact or effectiveness of these experiments. Hoffmann underlines that, for the most part, the experiments

do not aim to reduce emissions but instead to ‘redirect the economy and society onto a low-carbon pathway’ (p. 107). He stresses that actions – such as efforts to promote and facilitate clean technology development and deployment – that contribute to this goal either directly or indirectly are therefore relevant. He also notes that, as these initiatives are still experiments, there is uncertainty regarding their effectiveness (p. 157). Hoffmann therefore acknowledges that these ‘experiments’ are not ready to replace the multilateral treaty system and may never be, but he underlines that they are an important source of action and momentum, and will become more so with time. There is consequently no justification for focusing only on the multilateral system to the detriment of everything else.

On the whole, Soltau sets out various principles of fairness that could move countries towards a global agreement on climate change, highlighting the importance of fairness if any such agreement is to be accepted and implemented by countries. Hoffmann provides an alternative way of approaching climate change mitigation, which should complement, not necessarily replace, the multilateral treaty system. There is no doubt that a multilateral agreement that involves the participation of all countries would move the world forward on the road to stabilization of the climate at non-dangerous levels. Furthermore, as explained by Soltau, if such an agreement is based on agreed fairness principles, it is more likely to be universally accepted and implemented. However, there is a real chance that such an agreement would not contain sufficiently stringent mitigation commitments (p. 239). This is where Hoffmann’s approach could come in. The experimental system would drive climate action and complement the multilateral treaty-making, which would be used to enhance or ratify such climate action (pp. 161–2). Hence, both books contribute significantly to the climate policy discourse and efforts to address climate change.

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