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Review of Shadikhodjaev, S. (2024) Energy and environment under International economic law

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Citation

Marhold, A. A. (2025). Review of Shadikhodjaev, S. (2024) Energy and environment under International economic law. *World Trade Review*, 24(5), 670-672. doi:10.1017/S1474745625000096

Version: Publisher's Version

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Note: To cite this publication please use the final published version (if applicable).

BOOK REVIEW

doi:10.1017/S1474745625000096

S. Shadikhodjaev, *Energy and Environment: Exploring the Nexus under International Economic Law*

Cambridge University Press, 2024, 341 p.

The saying goes that nothing in this world can be said to be certain except death and taxes. Two things, Which I dare say are also certain, are that humanity needs some form of energy for survival, and that this inevitably impacts our environment one way or another. While the geopolitical winds of change may influence whether we prefer to regulate international economic relations multilaterally, preferentially, and/or unilaterally, the nexus between energy and environment will remain.

This is why the key ideas in Shadikhodjaev's book, which investigates the relationship between these two concepts in international economic law, are universal and transposable, no matter what the state and form of cross-border trade. The book starts from the premise that energy intersects with the environment at all stages of its life cycle, affecting everything from nature and public health to government emission reductions and investment policies. For this reason, the book engages with the topic across relevant agreements from the World Trade Organization, to preferential trade agreements and international investment agreements, to the ever-controversial Energy Charter Treaty (ECT). Rather than analysing how each of these agreements addresses the energy–environment nexus, the book wisely takes a thematic approach per chapter and covers the regulation of its most contentious issues: the link between energy trade and environmental protection, energy subsidies, pro-environmental energy standards and cross-border trade, investment regulation, and, finally, green technologies.

However, before delving into these thematic chapters, it is “of course” important to understand the foundations of the energy–environment nexus in international law. What is interesting here to observe is that, in effect, many of the relevant core principles stem from the area of international environmental law (sustainable development, polluter-pays principle, precautionary principle, common but differentiated responsibilities and environmental impact assessments) rather than from international energy regulation.¹ Perhaps this is due to the fact that the energy sector is rather technical in nature and was historically not so much preoccupied with the negative environmental externalities involved in energy extraction. It is also possible that common principles were not able to develop because of the changes in energy technologies over the past century, and the fragmentation of the sector.

One exception is the core principle of sovereignty over natural resources, though interestingly enough this principle is mainly tied to development and decolonisation and is not an ‘energy principle’ per se. Another exception, the principle of long-term energy security and its environmental dimension, is perhaps the only one of these core principles that finds its origins in energy policy (the International Energy Agency developed this into law during the 1970s oil crises). Energy security

* This article was originally published with an error in the title. The error has been corrected and the online HTML and PDF versions updated

¹S. Shadikhodjaev (2024) *Energy and Environment under International Economic Law*. Cambridge University Press, Section 1.1, pp. 12–30.

of supply is often squared with access to fossil fuels for countries, but its environmental dimension should not be diminished. Only a sustainable energy supply can guarantee nations' long-term energy security, after all.²

Arguably the book's most valuable contributions are in its chapters on pro-environmental energy standards and on the regulation of green technologies. In the chapter on pro-environmental energy standards, we learn a lot from the discussion on 'specific trade concerns' that were raised by WTO Members in the WTO TBT Committee. The Committee can provide a more informal and behind-the-scenes avenue for Members to resolve non-tariff trade conflicts.³ Many of these concerns had an energy/environmental angle to them. They, for instance, concerned energy efficiency rules (e.g. EU eco-design), emission controls (e.g. quality management of coal) and renewable energy standards (e.g. standards for solar panels or biofuels). The author gives a detailed overview of the crucial role that the TBT Committee played in solving disagreements between Members in this area, something that may have gone unnoticed to those that tend to focus only on the WTO's avenues for dispute settlement.⁴

The book's chapter on green technologies, arguably our world's future, unveils a known, but uncomfortable paradox: the policy measures we need in place to spread these much-needed technologies globally are often at odds with core rules in international trade and investment law.⁵ State-imposed R&D investment obligations may be banned by international investment agreement provisions on performance requirements, and government incentives for the scale up of green energy technologies can run afoul of WTO subsidy rules. Shadikhodjaev argues that while policies that may be problematic under these rules may be the most effective for the global spread and proliferation of green technologies, it is best to focus on lowering trade barriers, encouraging technical cooperation in and dissemination of these technologies. It may simply be 'legally safer'.⁶

Be as it may, this is one area in which the demise of multilateralism in trade can actually have a positive effect on the scale up of green technologies. In the era of unilateral trade policies, major trading blocks are enacting policies (e.g. the Inflation Reduction Act and the EU Green Deal) with elements that are arguably at tension with WTO law, without much fear of backlash.

Last but not least, the book discusses the contentious role of the ECT and its nexus with environmental regulation, in particular the lessons to be learned from renewable energy jurisprudence in the ISDS cases against Spain.⁷ There seems to be no easy answer for the tension between putting the burden of regulatory changes on investor's shoulders alone, versus the need for governments to develop and change energy policies in view of decarbonizing the grid. Shadikhodjaev argues that proactive engagements with investors about forthcoming policy developments may relieve this tension between the investor and the state.⁸ While it may be too late for the ECT, as its future is unclear and likely not rosy, these lessons learned may be taken into account in future regulation.

It may have been interesting to include a final chapter with an integral overall assessment of, and reflection on, the linkages and gaps between the chapters, and a further exploration of how these issues may be regulated in the future and in what form. Perhaps this is Shadikhodjaev's follow-up project, or something that other scholars in our field can venture into.

In sum, Shadikhodjaev provides the reader with a detailed, exhaustive, precise, and reliable analysis of most, if not all, relevant rules that regulate the energy–environment nexus in international economic law. This book therefore proves to be a particularly useful companion to those who work in the energy or international environmental law sectors, in policy and practice, and want to gain insight into how these areas are regulated. Likewise, it provides academics in our area with leads for

² IEA, Topics, Energy Security, www.iea.org/topics/energy-security (accessed 9 January 2025).

³ Shadikhodjaev, *supra* n. 1, p. 143.

⁴ *Ibid.*, p. 151.

⁵ *Ibid.*, p. 122.

⁶ *Ibid.*, p. 266.

⁷ *Ibid.*, p. 205 ff.

⁸ *Ibid.*, p. 213.

new research strands, specifically with regard to pro-environment standards, the regulation of green technologies, and managing the ‘regulatory chill’. And this is, if I may say so myself, something that is laudable.

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