

# EIA and SEA systems

History & Justification

Espoo Convention and its Protocol on SEA

11 December 2015 / Kakheti, Georgia



**UNECE**

# Content

- Origins and historical development of the environmental protection and environmental assessment
- Espoo Convention
- Protocol on SEA (video)
- Costs of inaction

# Historical developments of EIA and SEA

First court cases

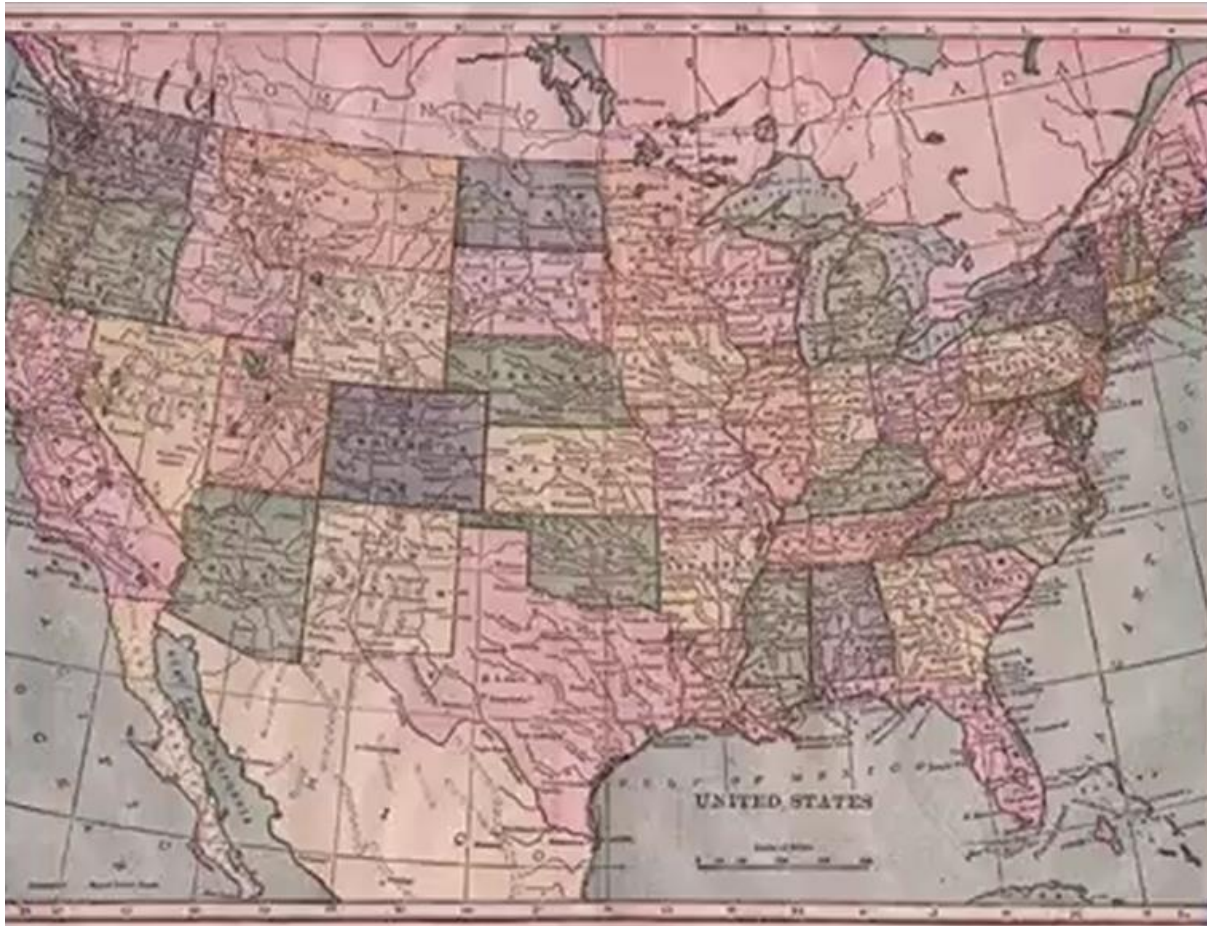
Applying Nuisance Law to Environmental Disputes

Copper mining and air pollution in American Appalalshian Mountains

- Madison v. Ducktown Sulphur (Tenn. 1904)
- Georgia v. Tennessee Copper (US 1907)

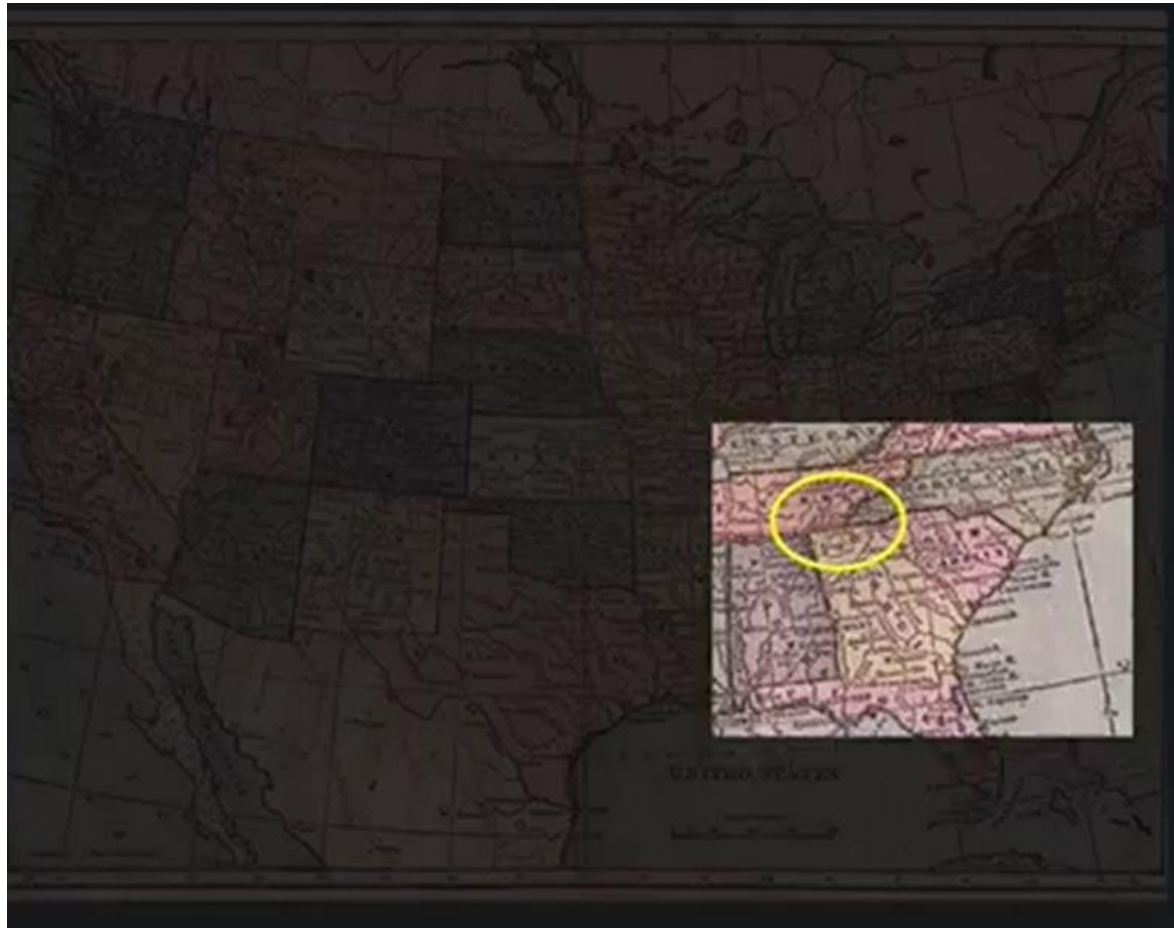
# Historical developments of EIA and SEA

Madison v. Ducktown Sulphur (Tenn. 1904)



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Based on presentation of Proff: Don Hornstein, School of Law, The University of North Carolina

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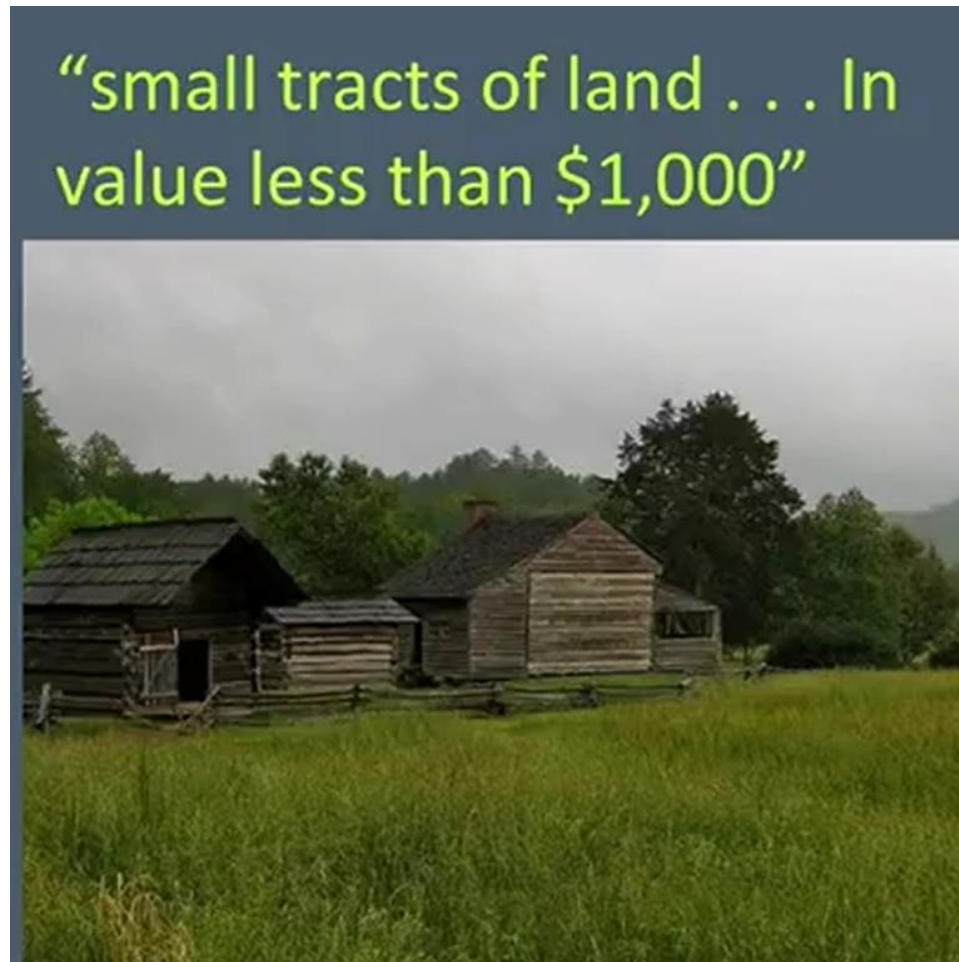
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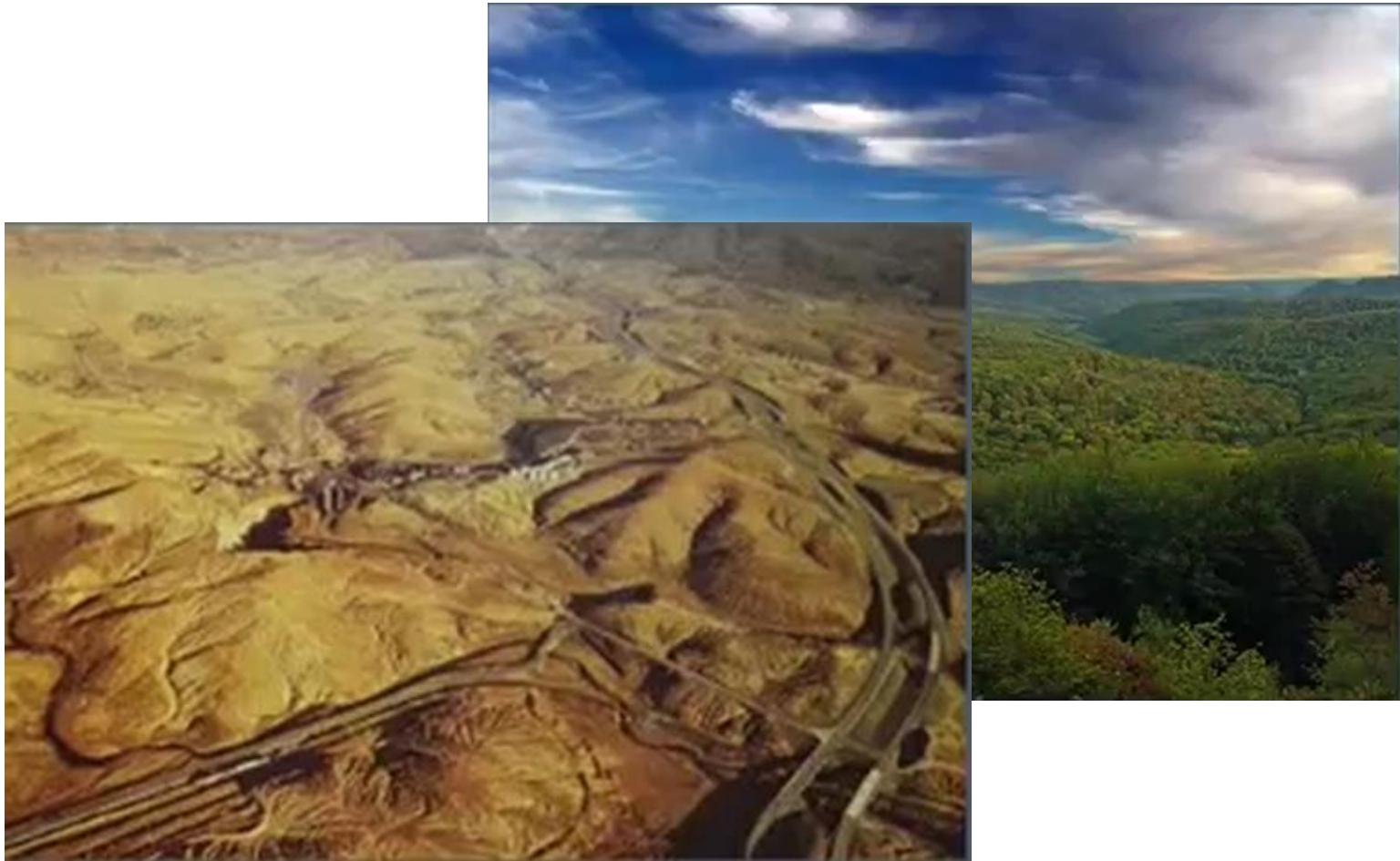


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# Historical developments of EIA and SEA

Madison v. Ducktown Sulphur (Tenn. 1904)

- Court decided that pollution is a private nuisance
- Plaintives (people) asked the court to stop the pollution
- Court decided to request a money compensation for property damages

?? money vs. quality of life ??

Do money damages accomplish anything?

- “externalities”
- “internalizing the externality”
- Getting the “price” right:
- Who/what else is injured?
- What value to put on the injuries?

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# Historical developments of EIA and SEA

Georgia v. Tennessee Copper (US 1907)

– Pollution is a public nuisance

– If the state of Georgia wants an injunction, court has no alternative but grant it

‘ it is a reasonable demand on the part of the sovereign state that the air over its territory should not be polluted on a great scale by sulphurous acid gas ... that the forests should not be further destroyed’

air pollution is not for sale

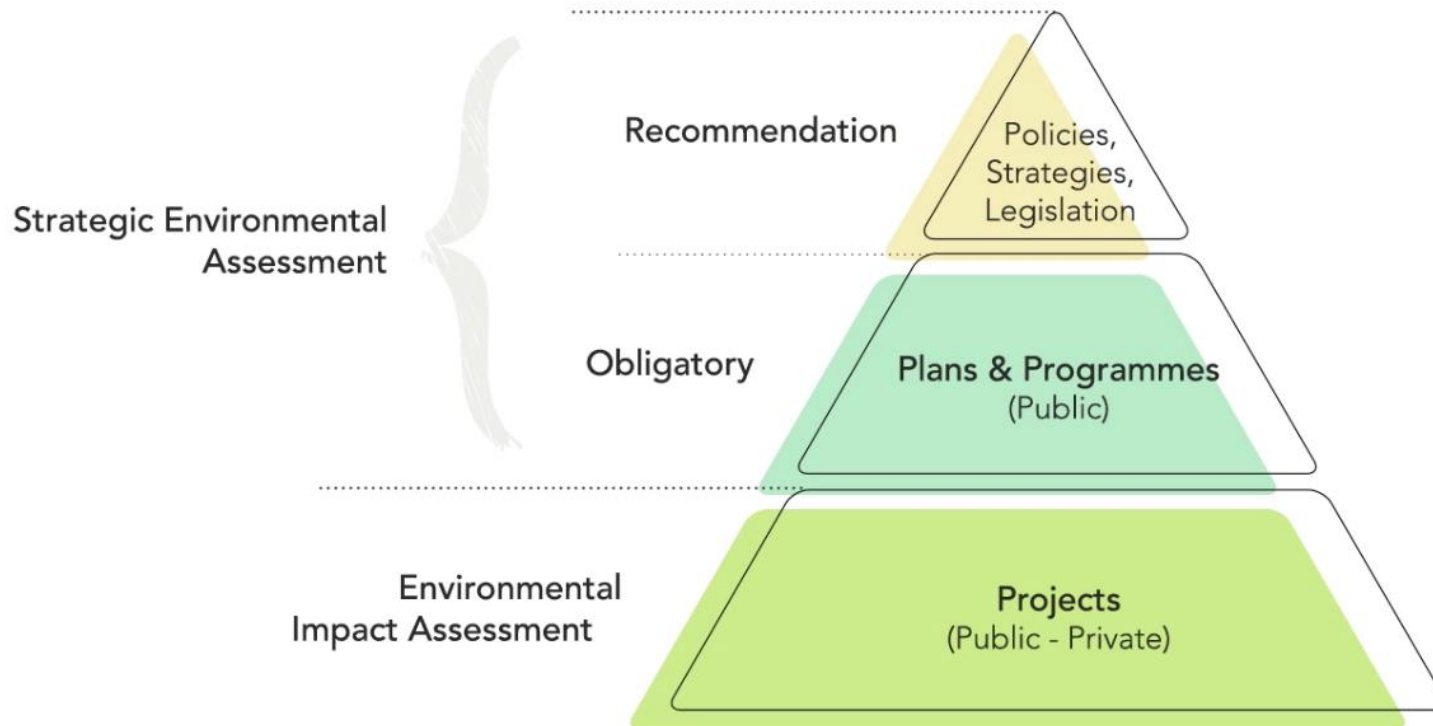
**It is a FUNCTION and a PREROGATIVE of a sovereign STATE to protect its people, land and environment**

# Historical developments of EIA and SEA

Follow up cases and international commitments

- The Trail Smelter attribution (US vs Canada, 1941)
- Stockholm Declaration, principle 21 (1972)
- Gabcikovo – Nadymaros (Slovakia vs Hungary, 1997)
- Paper mill (Uruguay vs Argentina, 2010)
- Rio Declaration (1992)
- UNECE Convention on Environmental Impact Assessment in a Transboundary Context

# Development of the Environmental Assessment Systems



# Historical developments of EIA and SEA legislation

## 1969 - US National Environmental Policy Act

- Applies to plans, programmes, policies, legislative proposals, projects

## EU relevant legislation

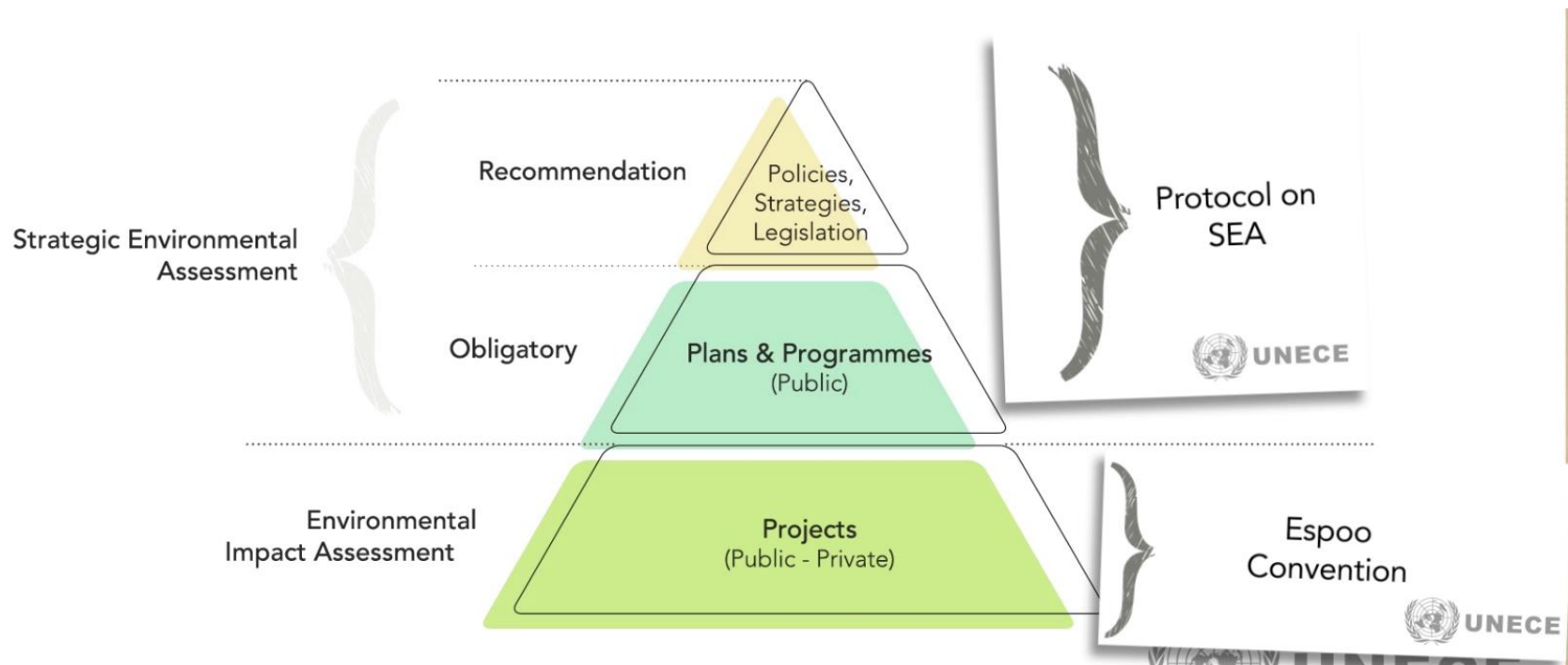
- 1982 SEVESO Directive (as amended)
- 1985 EIA Directive (impact of projects)
- 1991 Espoo Convention (transboundary, projects)
- 1992 CBD and Habitats Directive (impact of plans, programs & projects on protected habitats - Natura 2000 sites)
- 1992 Convention on the Transboundary Effects of Industrial Accidents
- 1998 Aarhus Convention
- 2001 SEA Directive – impact of plans & programs
- 2003 Public Participation Directive
- 2003 SEA Protocol - impact of plans & programs (including transboundary)

## Today

- All developed environmental national frameworks
- Since its existence the Convention has been successfully applied thousands of times
- The experience with the Protocol is still limited but developing



# EIA and SEA international agreements



# Cost of inaction

Aral Sea in 1989 (left) and now (right)



**Thank you**