Good morning everyone. Your excellency the Minister of Environment, Panel members, delegates, it is indeed a pleasure and an honour to be able to address you today as someone who was involved in the development of the Convention and participated in its initial meeting some 30 years ago. I am pleased to see how it has evolved over the years, and I still have fond memories of the dedicated people that contributed to its development. My presentation today will dwell mostly on the history of the convention, but I will also speak to some of its benefits and some thoughts on its future focus.

Let me begin with its history and some of the challenges that had to be overcome in its development. In the early 1970s, EIA was at its infancy and at the same time, concerns were starting to mount about transboundary environmental effects. Various international declarations in the 1970s and early 1980s really set the stage for work that began in earnest in the late 1980s. Most notable was Section 21 of the 1972 United Nations Conference on the Human Environment that recognized that states have a responsibility to ensure that activities within their jurisdiction do not cause damage to the environment of other States. Also, in 1975, the era of détente was ushered in with the signature of the Final Act of the Conference on Security and Cooperation in Europe. It referred two matters to the Economic Commission for Europe to undertake, namely the long-range transmission of air pollutants and the concept of environmental assessment.

A group of experts on EIA was created in 1982 under the ECE’s Senior Advisors on Environmental Problems. The focus for several years was more on an exchange of practices in each country, but interest started to grow on transboundary effects and how to address them in EIA. A precedent of sorts had been set when the ECE developed a Convention on Long-Range Transboundary Air Pollution which delt
with one aspect of a transboundary effect. Accordingly, the ECE was a logical forum to attempt to put into place a mechanism to implement the growing political acceptance that impacts do not always stop at our borders.

The Senior Advisors decided to hold a seminar on the subject in Warsaw in September 1987. However, transboundary EIA remained a controversial issue within the ECE and as it turned out, this subject was too sensitive to warrant a topic of its own. Instead, a compromise was reached, and the topic selected was EIA in Specific Circumstances.

I agreed to serve as a Rapporteur on this topic. No countries submitted papers on the subject so, I was given free reign and focussed my rapporteur’s paper on Transboundary EIA. The elements I identified in that paper were: notification, determination of significance, consultation, mitigation and compensation measures, dispute resolution, and the need and role of an international body for administration. As it turns out, these elements eventually were addressed in the subsequent Convention. Perhaps the most contentious of all the issues at the seminar was the subject of consultation in particular public participation in the EIA process.

Just before the Warsaw seminar, two other important international developments occurred. These were the elaboration in January 1987 by a UNEP Group of Experts on Environmental Law of principles on transboundary EIA, and publication in April 1987 of the report of the World Commission on Environment and Development (the Brundtland Commission). The Commission recommended amongst other things that Governments should support the development of regional and subregional cooperative arrangements for the protection and sustained use of transboundary ecological systems with joint action programmes to combat common problems.

Then at the Warsaw seminar itself, the sensitivities associated with the topic were overcome and it was agreed to recommend to the ECE Senior Advisors that it develop a framework agreement on EIA in a transboundary context.

A Working Group was formed and perhaps because of my role in the Warsaw Seminar, or perhaps because no one else wanted the job, I was elected as chair of the Working Group and led that process through six meetings from October 1988 to September 1990.
Three of the more contentious issues that were only resolved at the last meeting of the Working Group were:

1. Public consultation: At that time, eastern and western Europe was still separated by a physical barrier that made interaction with the public between these areas difficult if not impossible. Furthermore, public involvement in decision making, as EIA advocates, was not a concept practiced by all the member countries of the ECE at the time.

2. Terminology: The most contentious of all was the definition of “Impact” and the question as to how broad it should be. Looking back at it today, I am pleased that we had the foresight to include reference to health, cultural heritage, socio economic conditions and even climate at a time when climate change was not high on the agenda and certainly not in the context of EIA.

3. Determination of “significance”: It was felt that the determination of significance was likely to be the most frequent area for disagreement among the Parties. Accordingly, criteria were developed, and provision was made for an Inquiry procedure to seek a ruling on the likelihood of a significant transboundary impact.

In conclusion on the convention’s history, it is not surprising to see that issues that were contentious in its development continue in its implementation. But, having a mechanism in place to deal with such matters leads me to conclude that the need for the Convention is as valid today as when it was first developed.

Now let me focus on the main benefits that were foreseen in developing the Convention and whether they are still valid today. Some of these are:

1. Enhancing international cooperation in EIA particularly in a transboundary context – this is clearly happening today

2. Encouraging Parties to develop legal and administrative provisions in their policies to carry out EIA – most countries now have EIA processes in place in conformance with or like the provisions of the Convention

3. Serving as a model for the development of regional and bilateral agreements – various bilateral agreements have been developed to assist with matters such as public participation, translation, and cooperation.
4. Establishing a means to track its implementation and encourage compliance – the work of the Implementation Committee is impressive
5. Establishing a mechanism to deal with disputes in an orderly fashion – there are several examples where disputes are being examined
6. And finally, as affirmed in the Convention’s preamble, it would contribute to sustainable development.

Overall, it is my conclusion that the benefits foreseen in the development of the Convention appear to have been realized through its implementation, except perhaps for the latter benefit, its contribution to sustainable development.

Having reviewed some of the documents for this meeting and previous publications I have been impressed with the attention given to the implementation of the Convention. But it appears to me that the focus has largely been on the procedural application of the Convention and less on its practical implementation and I wonder if it now time to start showing how its application has improved proposed activities by reducing or eliminating their transboundary effects. In other words, some success stories.

It would also be helpful to have a simple registry that would list projects that have been subject to the Convention over each review period. From these, examples could be selected for an examination of their contribution to sustainable development.

In conclusion, I suggest Parties to the Convention should consider documenting success stories to demonstrate how implementation of the Convention is contributing to sustainable development, one of the Convention’s overall objectives.

In closing I thank you for the opportunity to speak to you today. It was a great honour. I hope that my summary of the history of the Convention’s development, its benefits, and my suggestion that Parties examine how the Convention is contributing to sustainable development, will be of assistance in your future work.