

14 January 1957

PROCEDURE EMPLOYED BY UNITED NATIONS
SUBSIDIARY ORGANS IN TAKING EVIDENCE

Table of Contents

	<u>Page</u>
I. United Nations Commission of Investigation Concerning Greek Frontier Incidents.	1
II. Subsidiary Group of the United Nations Commission of Investigation Concerning Greek Frontier Incidents	4
III. United Nations Special Committee on Palestine	5
IV. United Nations Special Committee on the Balkans	8
V. United Nations Temporary Commission on Korea.	9
VI. United Nations Commission for India and Pakistan.	11

PROCEDURE EMPLOYED BY UNITED NATIONS
SUBSIDIARY ORGANS IN TAKING EVIDENCE

I. United Nations Commission of Investigation
Concerning Greek Frontier Incidents

1. The Commission had no formal rules of procedure. The following is an account of its practices in taking evidence.

Investigating teams

2. In order to cover as wide an area as possible in its investigation and to hear the maximum number of witnesses, investigating teams of the Commission were sent out on various occasions while the main body of the Commission was functioning at its current base. There were seven of these teams. Their membership, which varied in number and composition, consisted of members of the delegations, liaison representatives and secretariat staff.

Hearing of parties

3. The initial and general phase of work of investigation at Athens was largely confined to the hearing of the liaison representatives of the Greek, Albanian, Bulgarian and Yugoslav Governments. At a later stage, both at Athens and at Salonika there were heard representatives of non-governmental organizations and other private individuals who were invited to appear before the Commission.

Representatives of non-governmental organizations

4. In conformity with the resolution of the Security Council which established the Commission and authorized it to call upon whatever sources were deemed necessary to complete the information relevant to its work, the Commission of Investigation heard the representatives of eight non-governmental organizations: EAM, General Confederation of Labor of Greece, Socialist Party (ELD), left Liberal Party, Pan-Hellenic Federation of Democratic Federations, Union of Victims and Hostages of the Civil War in Greece during December 1944, Unified Pan-Hellenic Organization of Youth (EPON), and the Rector of the University of Athens.

5. The procedure to be adopted with regard to the hearing of non-governmental organizations and private individuals was the subject of discussion held by the Commission at its 5th, 9th and 14th meetings, of 3, 5 and 7 February 1947. It was finally decided that except in the case of definitely important organizations that would in any case be heard by the Commission (such as the EAM and the General Confederation of Labor of Greece), the organizations requesting a hearing were to submit short summaries of their intended statements, which were to be classified by the secretariat and studied by the Committee of Experts. In these studies there were considered

both the importance and competence of the organization, and the relevancy of their intended depositions. Upon consideration of the suggestions made in this connection by its Committee of Experts, the Commission then decided whether or not to invite the organizations to appear before the Commission. In view of the numerous requests for a hearing before the Commission, the secretariat was authorized to scrutinize the organizations and the persons concerned in order to determine if they satisfied the conditions required for the purpose of being granted a hearing by the Commission. The Commission approved the text of a letter addressed to each of the organizations requesting a hearing, in order to insure that their statements would be confined to subjects under consideration by the Commission, as defined by the text of the Security Council resolution. A copy of the resolution was attached to this letter. It was also agreed that when organizations consisted of a number of smaller groups or parties, it would only be necessary to hear one single representative.

Oral evidence

6. During the course of its work in Greece, Bulgaria, Albania and Yugoslavia, the Commission received varying types of evidence. The direct oral evidence of witnesses who appeared before the main body of the Commission or before its investigation teams engaged the greatest number of meetings. The work of the Commission in Athens included the hearing of non-governmental organizations and individuals. The Salonika phase of the work of the Commission consisted primarily of the examination of witnesses presented by the Greek liaison representative. In its meetings in Sofia and Belgrade, the Commission examined witnesses presented by the liaison representatives of Bulgaria and Yugoslavia, although a few witnesses presented by the Greek liaison representative were also heard in these countries. The investigating teams of the Commission also examined witnesses proposed by the Greek, Albanian, Bulgarian and Yugoslav liaison representatives.

Selection of witnesses

7. In view of the impossibility of hearing all persons who desired to be heard by the Commission or of examining all witnesses proposed by the liaison representatives, it was necessary to make a selection of the witnesses to be examined. In this connection, the secretariat interviewed numerous individuals and examined relevant correspondence. The Committee of Experts, in close collaboration with the liaison representatives, planned the hearing of the witnesses proposed by them. Certain guiding principles (see above paragraph 5) were adopted with regard to the hearing of non-governmental organizations and individuals. The teams determined their own procedures for selecting witnesses. For example, at certain towns visited by Team I, the Chairman held a preliminary conference with the President of the Community, leaders of local organizations and applicants for a hearing. The Team made its selection of witnesses on the basis of the Chairman's report and lists submitted by the liaison representatives.

8. The Commission also was given and utilized the power calling witnesses on its own initiative.

9. Despite the fact that the Commission, under its terms of reference, clearly had the authority to request government officials, including members of ministerial cabinets, to appear before it, in practice it did not exercise this privilege. Altogether, the Commission and its investigating teams heard a total of 270 witnesses and statements during the course of the investigation. Of these, 238 were actual witnesses and some 32 were statements made before the Commission by individuals and representatives of non-governmental organizations. Of the 238 witnesses, 25 were presented by the Albanian liaison representative, 34 by the Bulgarian liaison representative, 76 by the Greek liaison representative, 67 by the Yugoslav liaison representative, and 36 summoned by the Commission itself. All this volume of evidence, which had been taken verbatim in the records of the meetings, was the subject of a detailed survey in the Final Report of the Commission.

Precedence of witnesses

10. A definite practice was established with regard to the order of hearing witnesses. In principle, precedence was given to the witnesses presented by the liaison representative in whose country the Commission or its investigating team was in operation, but time was also allowed for the witnesses presented by the other party to be heard.

Naming of witnesses

11. It also became an established practice in the Commission and in its teams that the names of the witnesses were given in advance by the respective liaison representative, together with written summaries of their intended depositions, sketches, maps and other relevant documents. In one instance, the failure of a liaison representative to disclose the names of the witnesses he wished to present before the Commission, was the subject of discussion. The difficulty was solved when the liaison representative agreed to submit in advance a list containing the names of witnesses.

Written communications

12. The Commission received a total of more than 3,000 communications from the members of the Commission, liaison representatives, private individuals and representatives of non-governmental organizations. While communications from delegates and liaison representatives were reproduced as official documents and circulated according to established practices, communications from private individuals and representatives of non-governmental organizations were too numerous to be treated in this manner. The secretariat filed these communications and circulated lists of them for the knowledge and use of the members of the Commission, who were "free to consult these files and to make such use of the information contained therein as they saw fit".

II. Subsidiary Group of the United Nations Commission of Investigation Concerning Greek Frontier Incidents

13. Like the parent body, the Subsidiary Group had no formal rules of procedure. The following is an account of the practices employed by it in taking evidence. No incident was to be investigated nor evidence heard except by formal decision of the Subsidiary Group.

14. As interpreted by the Subsidiary Group, paragraph V of its terms of reference required it to take formal decisions for the following purposes:

- (i) to investigate an incident (this decision included the hearing of all witnesses whom the Group deemed connected with the incident);
- (ii) to hear any witness not connected with a particular incident;
- (iii) to visit specific places (not already mentioned in the decision to investigate) or to interrogate witnesses (without following the usual procedure), when the Group was on an investigation trip.

Hearing of parties

15. Following the precedents and practices established by its parent body, the Subsidiary Group endeavoured to hear, in the first place, the liaison representatives of the governments concerned.

Oral evidence

16. Under its terms of reference, paragraph V(iii), the Subsidiary Group had to take a formal decision to hear evidence in each case. The principles governing the hearing of witnesses by the Group were discussed at its early meetings. It was suggested that the practice of the main Commission should be followed in the matter of hearing witnesses: that in principle, all witnesses proposed by any Government concerned should be heard and priority granted as requested; and that elimination of witnesses should be made only because of limitation of time. However, the Subsidiary Group maintained its prerogative to decide, on grounds of relevancy, which witnesses would be heard. As a general procedure for the hearing of witnesses, the Group adopted, at its eighth meeting, the following rule:

"...that once a decision had been taken to investigate an incident, this decision included as a corollary, the right to hear all witnesses in connection with the incident, presented by all interested governments, subject to the right of the Subsidiary Group to take other decisions on the spot. When it came to hearing witnesses independently of an incident, a formal decision should be taken regarding the hearing of those witnesses."

17. In most cases, the relevancy of evidence of witnesses presented by the Greek Government was established in advance by the examination by members of the Subsidiary Group of written summaries of evidence which were submitted by the liaison representative and circulated to the delegates. However, this practice was not followed in all cases. There were certain instances in which the Group, while on field operations, decided to start investigation on-the-spot of a different incident, likewise brought to its attention by the Greek liaison representative. In these instances, the liaison representative made a verbal presentation of each of his witnesses and the Group proceeded to a preliminary examination of this evidence, subject to hearing these witnesses in greater detail once the Group was back at its headquarters in Salonika.

18. In accordance with its right to hear witnesses not presented by any government, the Subsidiary Group decided in several instances to hear witnesses selected at random from the people of the places where it was conducting its investigation on-the-spot.

19. Altogether, the Subsidiary Group and its investigating team which sat temporarily at Yannina, heard a total of 83 witnesses and statements during the course of its investigation. Of these, 69 witnesses were either peasants, or soldiers, or former soldiers, or former "guerrillas", all of them presented by the Greek liaison representative, or chosen at random by the Subsidiary Group. The rest of the witnesses were officers of various ranks in the Greek Government army. This volume of evidence, which was taken verbatim in the records, was for the most part surveyed in the various interim or preliminary reports submitted by the Subsidiary Group to the main Commission.

Written communications

20. The practices of the main Commission were followed with regard to the communications received by the Subsidiary Group. Communications received from Governments concerned or from the principal organ, or any other type of official documentation were reproduced in full and circulated. However, they were reproduced in one language only; viz., the language in which they had been originally received. Communications from non-governmental organizations and private individuals were filed by the secretariat, and lists with a summary of their contents were circulated to the members of the Subsidiary Group. The contents of some of these communications were the subject of discussion at several meetings of the Group.

III. United Nations Special Committee on Palestine

21. The Special Committee, at its third meeting on 3 June 1947, adopted provisional rules of procedure which were adaptations of the rules of the General Assembly. In addition, special rules designed to meet the Committee's particular requirements were adopted. These related, inter alia, to the receipt of oral and written testimony and to translation for evidence given

in other than official languages of the United Nations. The texts of these rules follows.

IX. ORAL AND WRITTEN TESTIMONY

Rule 32

The Committee may, at its discretion, invite representatives of Governments or organizations, or private individuals, to submit oral or written testimony on any relevant matter.

Rule 33

Requests for oral hearing shall contain an indication of the subject or subjects on which the witness desires to testify.

Rule 34

The Committee may refer to a sub-committee for examination and recommendation such requests to present oral testimony as it deems advisable.

Rule 35

The Committee shall in each case decide the time and place of the hearing of any witness from whom it may decide to receive oral testimony. The Committee may advise any witness to submit his testimony in writing.

Rule 36

The Committee, on the basis of the time available to it, may limit either the number of witnesses or the time to be allowed to any witness.

Rule 37

The Committee may refer to a sub-committee for study and report such written testimony as it may deem advisable.

II. LANGUAGES

Rule 6

Witnesses who are unable to employ any of the official languages of the United Nations shall as a rule provide their own interpreters. If a witness who appears at the instance of the Committee is unable to employ any of the official languages and to provide his own interpreter, the Secretariat shall arrange for the same.

22. The following account of the practices employed by the Special Committee in taking evidence may throw light on the way the foregoing rules were applied.

Hearing of parties

23. The major effort of UNSCOP was directed towards gathering oral evidence from the parties involved in the problem of Palestine. While in New York, it had refused applications for hearings from organizations, on ground of lack of time. It also adopted a tentative plan of work to be followed after its arrival in Jerusalem, to which it adhered in general. This provided that:

- (i) The Government of Palestine should be asked to furnish factual information on its constitution and functions, together with other relevant data.
- (ii) The Arab and Jewish liaison officers should receive copies of this statement and be requested to present observations on it.
- (iii) After the completion of its itinerary, the Committee should begin its hearings in detail.

24. At an early stage of its work in Palestine, UNSCOP decided that hearings would only be granted on request. It fixed upon 5 July 1947 as the final date for the filing of all requests for hearings and for the furnishing of written statements, with the understanding that the Committee might consider statements or requests for hearings submitted at a later date. Sub-Committee 2, which was appointed at the tenth meeting of UNSCOP to deal with these requests, submitted four reports on the basis of which UNSCOP adopted the criteria, the list of parties to be heard, and the time-table for the hearings.

25. Hearings were to be granted to political organizations representative of considerable groups of the population of Palestine; to other organizations representing viewpoints of particular interest for the problem under investigation; to individuals having relevant information or personal viewpoints of particular interest to authorities of the various religions having relevant information with regard to paragraph 5 of the General Assembly resolution.

26. On the basis of the above criteria, lists were prepared in advance in order of priority, of the organizations and individuals to be heard. A tentative time-schedule was also adopted before each hearing and attempts were made to adhere to it. The Committee, at its public meetings in Jerusalem, heard 33 individuals, representing 13 political and religious organizations, and one individual in his personal capacity. At 3 private meetings in Jerusalem, it heard 6 representatives of the Government of Palestine, representatives of a Jewish communal organization and one representative of a Christian religious organization. In Beirut, the Committee heard 2 representatives of Arab States in public meetings, and 8 in private.

Oral evidence

27. The general practice was that the party first gave factual information and was asked factual questions by the members of the Committee; later on, the party put forth its suggestions and views regarding the future government of Palestine and was again subject to interrogation.

Written testimony

28. The Government of Palestine and the Jewish Agency submitted a number of background documents, factual statements and maps in support of their points of view. This was also done, but to a lesser extent, by some of the organizations heard. Pursuant to the invitation published by the Committee, a large number of written statements were also submitted by organizations and individuals who had not requested or had not been granted hearings. A list of these written statements, together with a brief description of each, was prepared by the secretariat, for the convenience of the Committee.

Informal evidence

29. The members of the Committee made extensive efforts to gather informal evidence. These included private discussions with members of Governments, with leading personalities of the Arab and Jewish communities and of religious organizations, with members of illegal organizations and with the "man in the street". In important cases informal notes of the evidence obtained were subsequently circulated to all members of the Committee. Two notable instances were the visit of the Chairman and one other representative to witness the arrival of the illegal immigration ship "Exodus 1947", and the visit of the Chairman and seven members of the Committee to Amman.

IV. United Nations Special Committee on the Balkans

30. The Special Committee, having been empowered by resolution 109 (II) to determine its own procedure, adopted its rules of procedure on 27 November 1947. Chapter XIII of the rules referred to oral and written testimony.

XIII. ORAL AND WRITTEN TESTIMONY

Rule 38

The Special Committee may, at its discretion, invite representatives of governments or organizations, or private individuals, to submit oral or written testimony on any relevant matter.

Rule 39

Request for oral hearing shall indicate the subject or subjects on which the witness desires to testify as well as the language to be used.

Rule 40

The Committee may refer to a sub-committee for examination and recommendation such requests to present oral testimony as it deems advisable.

Rule 41

The Committee shall in each case decide the time and place of the hearing of any witness from whom it may decide to receive testimony.

Rule 42

If the Special Committee is unable to hear all witnesses whom it desires to question concerning a specific incident, it shall hear those witnesses whose testimony appears prima facie to be of the greatest value.

Rule 43

The Committee may refer to a sub-committee for study and report such written testimony as it may deem advisable.

31. The Special Committee's functions of observation were carried out by the observation groups established by it. The form of evidence available to the observation groups were: (a) direct personal observation of happenings on the spot; (b) direct evidence from objects actually seen; and (c) indirect evidence given by witnesses.

V. United Nations Temporary Commission on Korea

32. Provisional rules of procedure drafted by the secretariat were adopted provisionally by the Commission at its second meeting. They were based on the rules of procedure of the General Assembly and were prepared in the light of experience gained in other United Nations commissions in the field, and special situations which had to be met in Korea. Rules of procedure were adopted in permanent form at the sixth meeting and amended at the tenth meeting. Chapter XI of the rules of procedure, relating to the taking of evidence, follows:

XI. ORAL AND WRITTEN STATEMENTS

Rule 50

The Commission may at its discretion invite or admit representatives of Governments or organizations or private individuals to submit oral or written statements. Requests for oral hearings shall contain an indication of the subject or subjects on which the applicant desires to express his views.

Rule 51

The Commission may refer to a sub-commission for examination and recommendation such requests to present oral statements as it deems advisable.

Rule 52

The Commission, in consultation with the secretariat, shall in each case decide the time and place of the hearing of any person from whom it may decide to receive an oral statement. The Commission may advise any person to submit his statement in writing.

Rule 53

The Commission may limit either the number of persons desiring to present an oral statement or the time to be allowed to any such person.

Rule 54

The Commission may refer to a sub-commission for study and report such written statements as it may deem advisable.

Rule 55

A sub-commission or a subsidiary body set up by the Commission enjoys such rights as are accorded to the Commission under rules 50-54, unless the Commission decides otherwise.

33. The following account of the Temporary Commission's practices supplements the information contained in the rules.

Hearing of parties

34. The Commission held three types of hearings, divided between three Sub-Committees. In Sub-Committee 1, which dealt with the free atmosphere for elections, responsible authorities were heard on the interpretation and application of laws, regulations and ordinances in force in Korea bearing on the question of freedom of elections. In Sub-Committee 2 were heard Korean personalities whose views might be helpful to the Commission in the discharge of its duties. Subsequently, all leading political figures were invited before this Sub-Committee for hearings which, in addition to the items of the questionnaire, bore on the problem of separate elections in Southern Korea. With the exception of most of the extreme leftists, they all accepted the invitation. Not only politicians, but also members of the clergy, representatives of various women's organizations, educators, bankers, officials of the Chamber of Commerce, newspaper editors, etc. appeared before the Sub-Committee. A consultation was held with the Commanding General of USAFIK, and a separate interview was granted to a prominent trade union leader.

35. Sub-Committee 3, entrusted with problems related to the electoral law, heard a number of prominent parliamentarians, justices of the Supreme Court, and American officials who had been designated by the Military Governor as United States experts.

Oral evidence

36. Other oral evidence was admitted when members of Sub-Committee 2 interviewed a village headman and ordinary people ("the man in the street") in the city of Seoul.

Written communications

37. Sub-Committee 2 was designated as the principal organ to receive written communications destined for the Commission. About 800 such communications had been received up to 10 May 1948, and a representative part of it was reproduced by the secretariat as working documentation for the Sub-Committee. In addition, the secretariat periodically issued full lists of communications received, with a brief indication of the sender and the contents.

38. In addition, in observing the elections the Commission established observer groups to gather information. These interviewed candidates and political party representatives, election committee officials and local government officials.

VI. United Nations Commission for India and Pakistan

39. At its fourth meeting on 18 June 1948, the Commission adopted, and at its eleventh meeting on 3 July 1948, amended its rules of procedure. Chapter XI of the rules related to the taking of evidence. The texts of the rules follows.

XI. ORAL AND WRITTEN STATEMENTS

Rule 50

The Commission may at its discretion invite or admit representatives of Governments or organizations or private individuals to submit oral or written statements. Requests for oral hearings shall contain an indication of the subject or subjects on which the applicant desires to express his views.

Rule 51

The Commission may refer to a sub-commission for examination and recommendation such requests to present oral statements as it deems advisable.

Rule 52

The Commission, in consultation with the Secretariat, shall in each case decide the time and place of the hearing of any person from whom it may decide to receive an oral statement. The Commission may request any person to submit his statement in writing.

Rule 53

The Commission may limit either the number of persons desiring the present an oral statement or the time to be allowed to any such person.

Rule 54

A sub-committee or a subsidiary body set up by the Commission enjoys such rights as accorded to the Commission under Rules 50-54 unless the Commission decides otherwise.