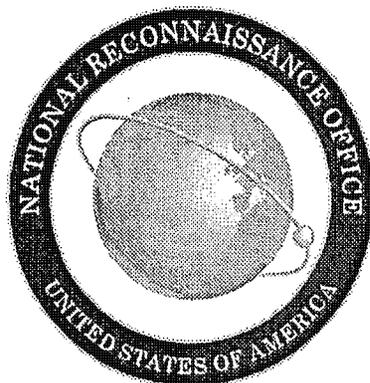


~~TOP SECRET/BYEMAN~~

# OFFICE OF GENERAL COUNSEL

NRO



# LEGAL STATUS OF NRO

BRIEFING TO JOINT DOD-CIA IG TEAM

11 SEPTEMBER 1995

~~TOP SECRET/BYEMAN~~

~~TOP SECRET/BYEMAN~~

# LEGAL STATUS OF NRO

- **THE NRO IS A JOINT INTERAGENCY ORGANIZATION WITHIN THE EXECUTIVE BRANCH WHICH IS PLACED WITHIN DoD FOR EXECUTIVE AGENT SUPERVISION AND SUPPORT**

**PARA 2, 1961 AGREEMENT ON MANAGEMENT OF NATIONAL RECONNAISSANCE PROGRAM. (SEE ALSO 1962 AND PROPOSED 1963 AGREEMENTS)**

- **THE NRO IS AN INTELLIGENCE COMMUNITY MEMBER PURSUANT TO 50 U.S.C. 401A (4)(F) AND E.O. 12333**
- **THE NRO IS A SEPARATE OPERATING AGENCY, OF DoD**

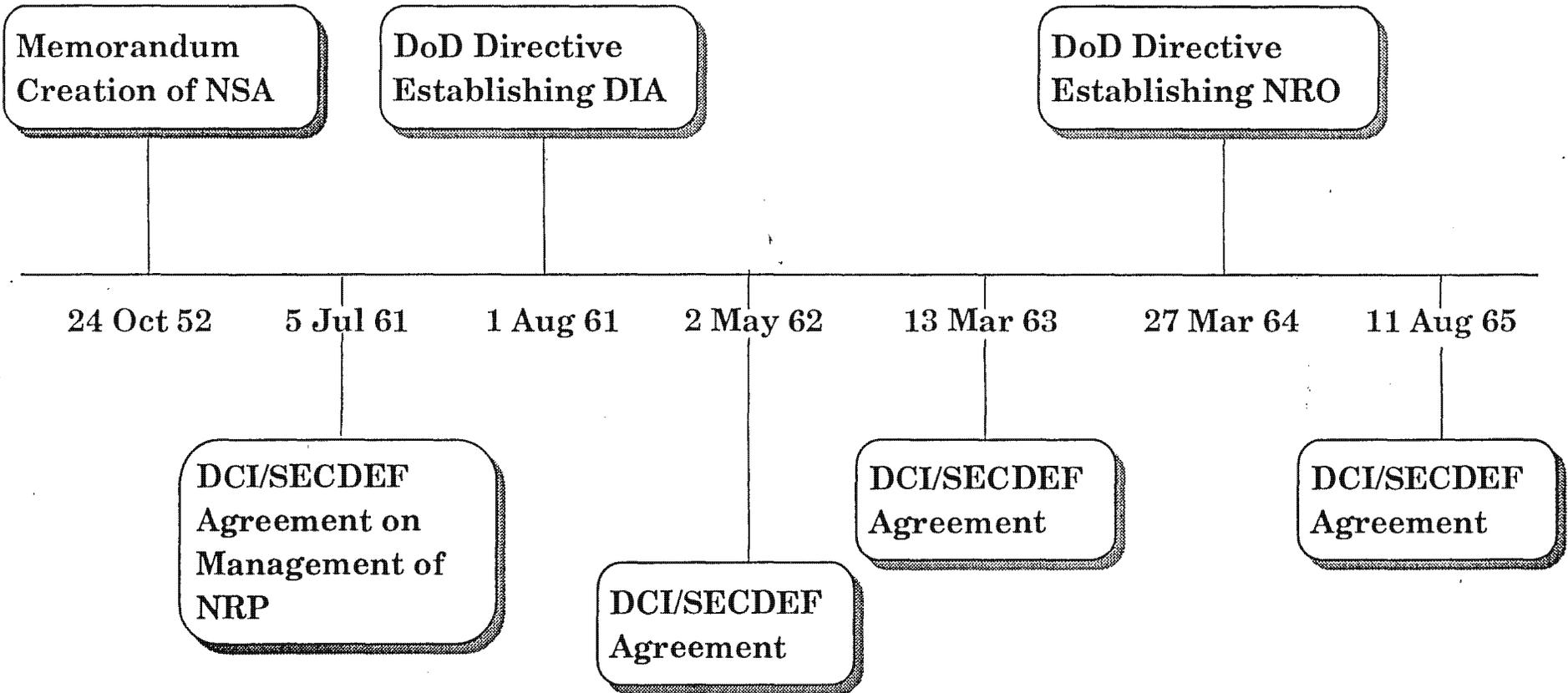
**PARA I, 1964 DoD DIRECTIVE TS 5101.23  
PARA B, 1965 AGREEMENT ON THE REORGANIZATION OF THE  
NRO**

11 SEPTEMBER 1995

~~TOP SECRET/BYEMAN~~

~~TOP SECRET/BYEMAN~~

**EARLY TIME LINE**



~~TOP SECRET/BYEMAN~~

~~TOP SECRET/BYEMAN~~

**The NRO is to be managed, and operated in accordance with the methodology agreed to by the principals (DCI/SECDEF)**

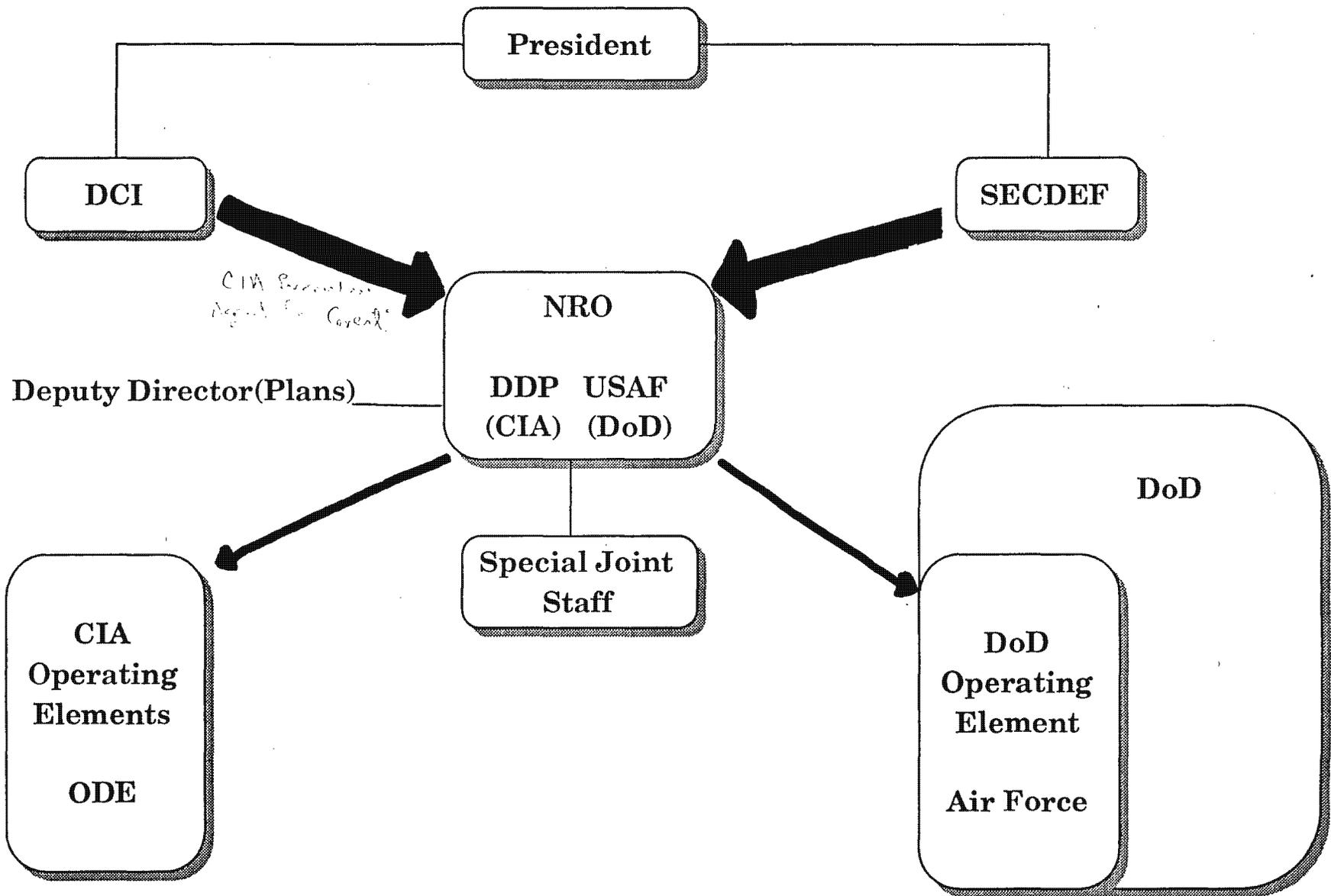
- 1961, 1962 and 1963 Agreements clearly evidence the collaborative status (operating elements followed parent rules)
- 1963 and 1965 Agreements evidence Executive Agent status of SecDef and agreement of DCI to diminish his role in the day to day operation and management of the NRO (operating elements still follow parent rules)
- 1992 National Security Act amendments "repeat" 1965 status but recognize that NRO is managed "in concert" with the DCI.

11 SEPTEMBER 1995

~~TOP SECRET/BYEMAN~~

~~TOP SECRET/BYEMAN~~

6 September 1961 - 1 May 1962



~~TOP SECRET/BYEMAN~~

~~TOP SECRET/BYEMAN~~

## 1961 Agreement

4. Within the Department of Defense, the Department of the Air Force will be the operational agency for management and conduct of the NRP, and will conduct this program through use of streamlined special management procedures involving direct control from the office of the Secretary of the Air Force to Reconnaissance System Project Directors in the field, without intervening reviews of approvals. The management and conduct of individual projects or elements thereof requiring special covert arrangements may be assigned to the Central Intelligence Agency as the operational agency.

6 September 1961 Agreement

11 SEPTEMBER 1995

~~TOP SECRET/BYEMAN~~

~~TOP SECRET/BYEMAN~~

## 1961 Agreement

2. There will be established on a covert basis a National Reconnaissance Office to manage this program. This office will be under the direction of the Under Secretary of the Air Force and the Deputy Director (Plans) of the Central Intelligence Agency acting jointly. It will include a small special staff whose personnel will be drawn from the Department of Defense and the Central Intelligence Agency. This office will have direct control over all elements of the total program.

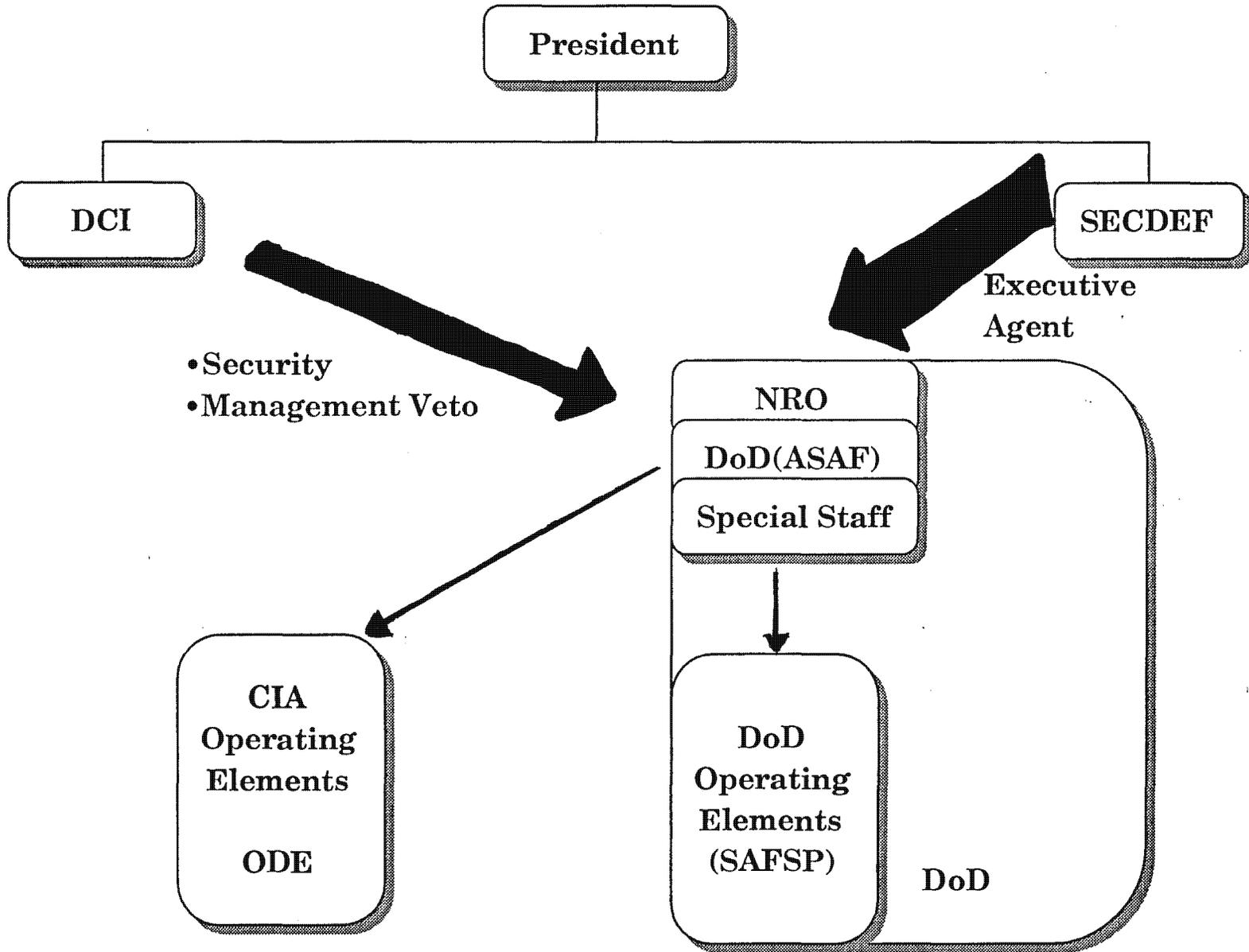
6 September 1961 agreement on Management of the National Reconnaissance Program signed by C.P. Cabell, Acting DCI and Roswell L. Gilpatric, Deputy Secretary of Defense

11 SEPTEMBER 1995

~~TOP SECRET/BYEMAN~~

~~TOP SECRET/BYEMAN~~

13 March 1963 - 11 August 1965



~~TOP SECRET/BYEMAN~~

~~TOP SECRET/BYEMAN~~

## 1963 AGREEMENT

### MANAGEMENT OF THE NATIONAL RECONNAISSANCE PROGRAM

To insure that the particular talents, experience and capabilities within the Department of Defense and the Central Intelligence Agency are fully and most effectively utilized in the establishment, management and conduct of the National Reconnaissance Program, the Secretary of Defense and the Director of Central hereby agree that the Secretary of Defense shall be the Executive Agent for the National Reconnaissance Program, which shall be developed, managed and conducted in accordance with policies and guidance jointly agreed to by the Secretary of Defense and the Director of Central Intelligence.

To carry out his responsibilities as Executive Agent for the National Reconnaissance Program, the Secretary of Defense will establish as a separate operating agency of the Department of Defense a National Reconnaissance Office under the direction, authority and control of the Secretary of Defense.

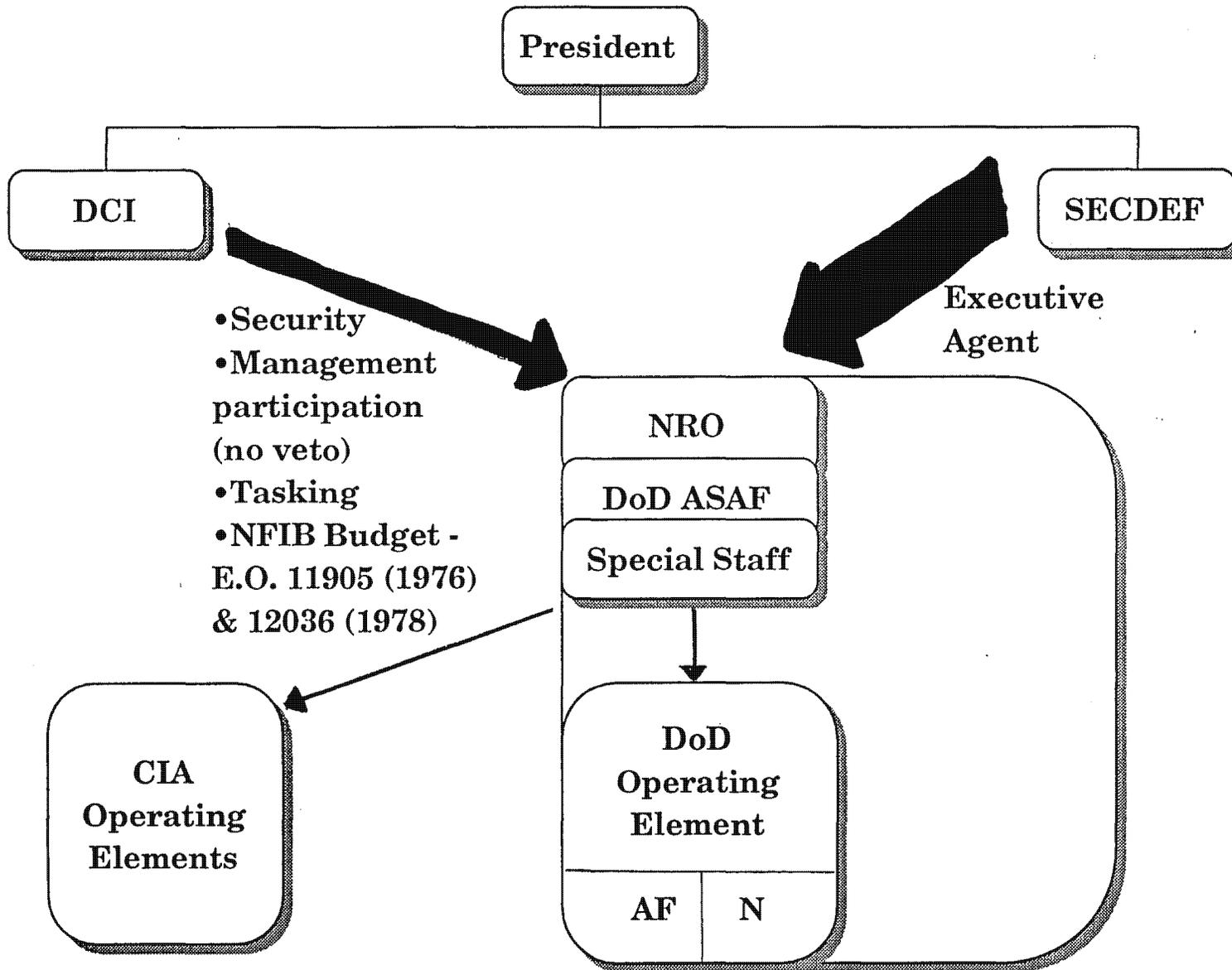
March 13, 1963 agreement on Management of the NRP, signed by Deputy Secretary of Defense Roswell L. Gilpatric and DCI John D. McCone

11 SEPTEMBER 1995

~~TOP SECRET/BYEMAN~~

~~TOP SECRET/BYEMAN~~

11 August 1965 - 1992



~~TOP SECRET/BYEMAN~~

~~TOP SECRET/BYEMAN~~

11 August 1965  
**AGREEMENT FOR REORGANIZATION OF THE  
NATIONAL RECONNAISSANCE PROGRAM**

The Secretary of Defense will:

1. Establish the NRO as a separate agency of the DoD and will have the ultimate responsibility for the management and operation of the NRO and the NRP;
2. Choose a Director of the NRO who will report to him and be responsive to his instructions;

National Reconnaissance Office

1. To implement the NRP, the Secretary of Defense will establish the NRO as a separate operating agency of the DoD. It shall include the SOC which shall be jointly manned.
2. The Director of the NRO shall be appointed by the Secretary of Defense. The Director NRO will:
  - a. Subject to direction and control of the Secretary of Defense and the guidance of the Executive Committee as set forth in Section D above, have the responsibility for managing the NRO and executing the NRP.

Signed by Deputy Secretary of Defense Cyrus Vance and DCI W.F. Raborn

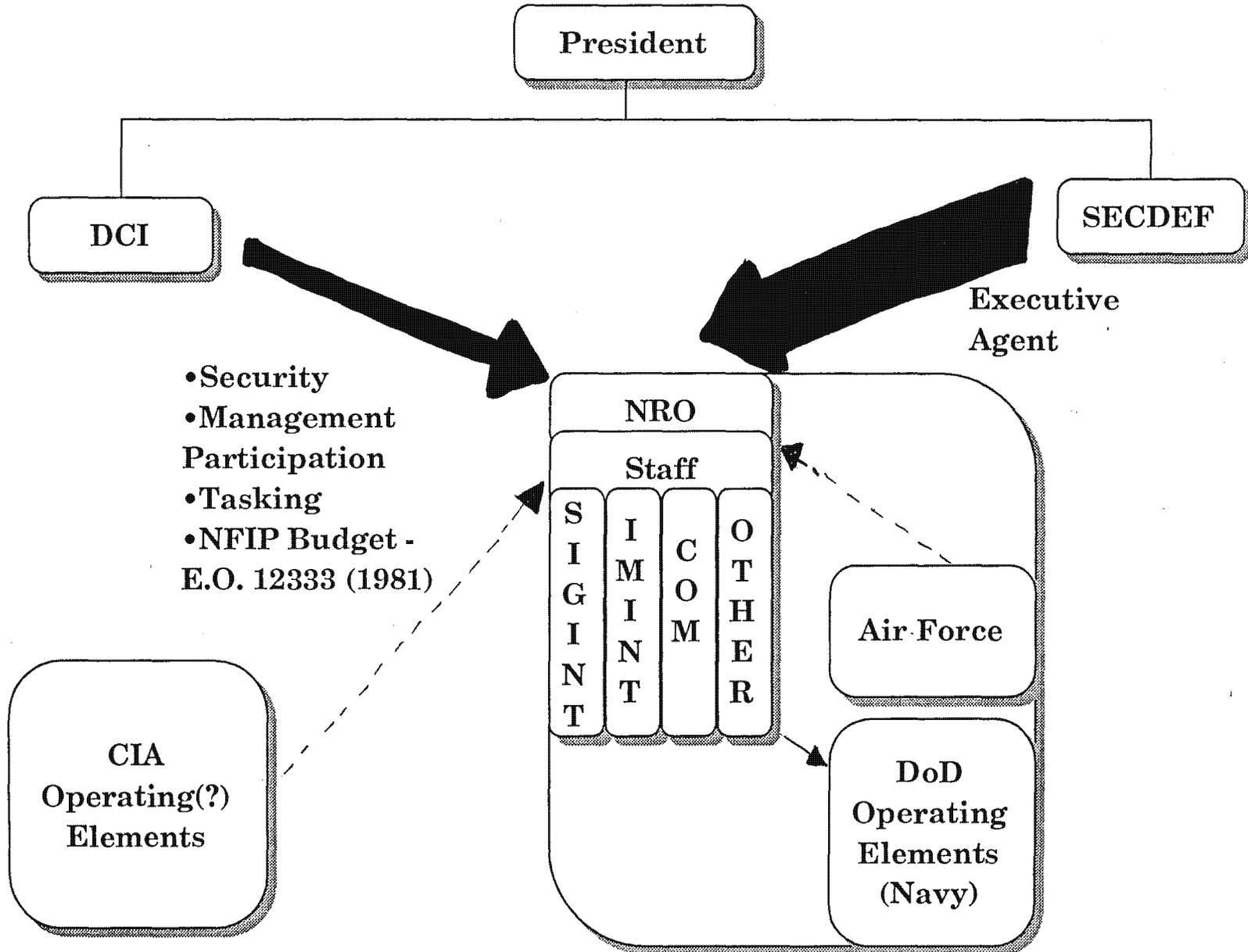
*Executive Comm. llo.*  
*DAE*  
*NSA Chief*  
*...*

~~TOP SECRET/BYEMAN~~

11 SEPTEMBER 1995

~~TOP SECRET/BYEMAN~~

1992 - Present



~~TOP SECRET/BYEMAN~~

~~TOP SECRET/BYEMAN~~

**NATIONAL SECURITY ACT**

**Sec. 105**

**RESPONSIBILITY FOR THE PERFORMANCE OF SPECIFIC FUNCTIONS.**--Consistent with section 103 and 104 of this Act, the Secretary of Defense shall ensure--

through the National Reconnaissance Office (except as otherwise directed by the President or the National Security Council), the continued operation of an effective unified organization for the research and development, acquisition, and operation of overhead reconnaissance systems necessary to satisfy the requirements of all elements of the intelligence community;

**11 SEPTEMBER 1995**

~~TOP SECRET/BYEMAN~~

~~TOP SECRET/BYEMAN~~

# INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 1993

OCTOBER 1, 1992

## CONFERENCE REPORT

The conferees note that subsection 105(b)(3) as contained in section 706 will recognize in law for the first time the National Reconnaissance Office (NRO) of the Department of Defense, and that the subsection briefly sets forth the functions of that organization. As currently constitutes, the Director of the NRO reports to the Secretary of Defense, and the Secretary has ultimate responsibility, which is exercised in concert with the Director of Central Intelligence, for the management and operation of the NRO. The Director of the NRO executes the NRO's responsibilities through the Department of Defense and the Central Intelligence Agency. It is not the intention of this subsection to alter or limit the existing roles and responsibilities of the Secretary of Defense or the DCI with respect to the management and operation of the NRO. Instead, the statutory language serves to recognize in law the existence of this Office and the vital role which it plays within the intelligence community.

11 SEPTEMBER 1995

~~TOP SECRET/BYEMAN~~

~~TOP SECRET/BYEMAN~~

## **NRO is not a Defense Agency**

- SECDEF authority to create Defense Agencies (10 U.S.C. 101) limited to combining DoD functions and components.
- Charter of DIA and NSA describe them as Defense Agencies and explicitly state they will follow DoD procedures.
- NRO not designated as a Defense Agency pursuant to statute or regulation. In contrast to DIA and NSA, agreements do not state that NRO must follow DoD procedures.
- 1961 & 1962 agreements clearly evidence a joint entity.

11 SEPTEMBER 1995

~~TOP SECRET/BYEMAN~~

~~TOP SECRET/BYEMAN~~

- 1963 change in status was not intended to change character of NRO, only senior management structure.
- Current (1965) agreement does not change status
- Functional reorganization consistent with joint character - contrary view (Defense Agency) requires rethinking of non-DoD support.
- Consistent with Congressional recognition evidenced by 1992 Conference Report language.
- Jointness continues today and emphasized by everyone (e.g. Westfields Report)

11 SEPTEMBER 1995

~~TOP SECRET/BYEMAN~~

~~TOP SECRET/BYEMAN~~

## CHAPTER 1---DEFINITIONS

### § 101. Definitions

(a) In general.--The following definitions apply in this title:

(11) The term "Defense Agency" means an organizational entity of the Department of Defense--

(A) that is established by the Secretary of Defense under section 191 of this title (or under the second sentence of section 125(d) of this title (as in effect before October 1, 1986)) to perform a supply or service activity common to more than one military department (other than such an entity that is designated by the Secretary as a Department of Defense Field Activity); or

(B) that is designated by the Secretary of Defense as a Defense Agency.

11 SEPTEMBER 1995

~~TOP SECRET/BYEMAN~~

~~TOP SECRET/BYEMAN~~

## ARMED FORCES

### TITLE 10

#### § 191. Secretary of Defense: authority to provide for common performance of supply or service activities

(a) Authority.--Whenever the Secretary of Defense determines such action would be more effective, economical or efficient, the Secretary may provide for the performance of a supply or service activity that is common to more than one military department by a single agency of the Department of Defense.

(b) Designation of common supply or service agency.--Any agency of the Department of Defense established under subsection (a) (or under the second sentence of section 125(d) of this title (as in effect before October 1, 1986)) for the performance of a supply or service activity referred to in such subsection shall be designated as a Defense Agency or a Department of Defense Field Activity.

(Added Pub.L. 99--433, Title III, § 301(a)(2), Oct. 1, 1986, 100 Stat. 1019, and amended Pub.L. 100-26, § 7(i)(1), Apr. 21, 1987, 101 Stat. 282.)

11 SEPTEMBER 1995

~~TOP SECRET/BYEMAN~~

~~TOP SECRET/BYEMAN~~

## Conclusion:

DoD regulations, directives policies or procedures, applicable by their terms to DoD components, **are not** applicable to the NRO (NRP) unless specifically so provided.

11 SEPTEMBER 1995

~~TOP SECRET/BYEMAN~~

~~TOP SECRET/BYEMAN~~

**The SECDEF has delegated his broad Executive Agent authority to select NRO policies and procedure to the DNRO.**

- 1964 NRO Directive para. II - The DRNO...for the complete management and conduct of this program...

- The DNRO's complete management authority is only limited by paragraph II language limiting conduct of the NRP in accordance with policy guidance and decisions of the SecDef. No reference to rules and regulations of DoD.

- This NRO DoD Directive did not require NRO to follow "DoD policies, directives and instructions." Such language was included in 1959 NSA Directive and 1961 DIA Directive.

11 SEPTEMBER 1995

~~TOP SECRET/BYEMAN~~

~~TOP SECRET/BYEMAN~~

- 30 year history of exercise of broad joint authority, SECDEF seemingly has concurred in this approach.
- Confirmation of Presidential level desire for flexibility contained in 1983 and 1984 PFIAB reports.
- 1964 NRO Directive provides specific direction regarding streamlined procedures and authority to deviate from normal staff approval or process requirements (paragraph III B)

11 SEPTEMBER 1995

~~TOP SECRET/BYEMAN~~

~~TOP SECRET/BYEMAN~~

# SOURCE OF DNRO AUTHORITY

## Inherent Authority

- 50 U.S.C. 401A(4) (F)
- Authorization & Appropriations Acts
- Executive Order 12333

## Delegated Authority

- DoD Directive TS 5105.23
- 1965 Agreement or Reorganization of NRO, as amended
- Directive 7
- DCIDs DCI memoranda (1990)
- 1994 DCI Delegation of Contracting Authority

11 SEPTEMBER 1995

~~TOP SECRET/BYEMAN~~