

“Operational control” is a term that has attained growing significance as a metric of what the United States has achieved in border security. However, the term is ambiguous, shifting, and poorly-defined. Whether operational control is a specific state of existence, or a concept that describes a range of security levels is unclear. There is confusion over how operational control is measured or assessed. And the meaning and purpose of operational control differs dramatically between Congress and the Administration.

What is Operational Control?

Congress statutorily defined operational control in the Secure Fence Act of 2006, which ordered DHS to achieve operational control of all the land and maritime borders of the United States within 18 months of enactment. The act defined operational control as: “the prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband.”¹ In other words, the Act ordered DHS to completely seal the entire U.S. border.

The United States Border Patrol defined operational control in its 2007 national strategy: “Operational control is defined as the ability to detect, respond, and interdict border penetrations in areas deemed as high priority for threat potential or other national security objectives.”² On a practical level, Border Patrol has been using the concept of operational control for the last decade or more, to describe different levels of resource allocation and the capacity to respond to incursions on various parts of the border. Border Patrol uses the term “operational control” to refer to how they have deployed resources in a particular area, which they decide to deploy based on risk assessments.

Whose definition is right?

The Secure Fence Act’s definition of operational control as a 100% sealed border is unrealistic. The only countries that have ever achieved something close to that kind of border security have been totalitarian regimes with armed guards on shoot-to-kill orders.³ As Edward Alden, of the Council on Foreign Relations, said regarding achieving operational control on Congress’ definition: “You can’t seal an open, democratic country like the United States, and not really in some fundamental way damage what we are as a country.”⁴ Furthermore, as Richard Stana of

¹ Secure Fence Act of 2006, Pub. Law 109-367, § 2(b).

² National Border Patrol Strategy, *Office of Border Patrol*, Aug. 21, 2007, p. 3, available at http://www.cbp.gov/linkhandler/cgov/border_security/border_patrol/border_patrol_ohs/national_bp_strategy.ctt/national_bp_strategy.pdf

³ Rey Koslowski, “The Evolution of Border Controls as a Mechanism to Prevent Illegal Immigration,” *Migration Policy Institute*, Feb. 2011.

⁴ Edward Alden at the Panel on Border Security, *National Journal*, Mar. 28, 2011.

the Government Accountability Office (GAO) observed, the cost of actually preventing every incursion to the entire country would be completely prohibitive.⁵

Meanwhile, the Border Patrol's definition of operational control allows for an extremely important distinction in how resources are allocated: the matter of threat. Apprehending or preventing every single incursion on the border is not only an unreasonable goal, it's a poorly targeted policy. Most people crossing the border come to the United States to work or join family members. While the Border Patrol is charged with preventing these illegal entries, the failure to interdict every single migrant does not mean that the United States is in danger, or that the border is not secure. Rather, the Border Patrol reasonably devotes its most extensive resources to achieving greater control in areas of high risk, such as smuggling and trafficking routes.

How Border Patrol Thinks of and Measures Operational Control

Operational control levels include several strata: "controlled," "managed," "monitored," and "low-level monitored." It is not the state of having achieved a 100% sealed border, but of deploying sufficient resources in a given area to:

- 1) Establish substantial probability of apprehending terrorists and their weapons as they attempt to enter illegally between the ports of entry;
- 2) Deter illegal entries through improved enforcement;
- 3) Detect, apprehend, and deter smugglers of humans, drugs, and other contraband;
- 4) Leverage "Smart Border" technology to multiply the effect of enforcement personnel; and
- 5) Reduce crime in border communities and consequently improve the quality of life and economic vitality of targeted areas.⁶

While a "controlled" area means that Border Patrol has the capacity to immediately identify and respond to what is happening, this is not necessary to achieving security in general. In rural areas, immediate response is not necessary, because there are few places to melt away into the general population. The amount of resources required for controlling those remote areas is astronomical, while the risks and the need for that level of activity is low. A "managed" or "monitored" designation represents fewer resources deployed, but still at a level that may be entirely sufficient to detect and respond to any threats in the given region.

In sum:

- "Operational control" is not equivalent to "border security."
- Greater operational control *does* reflect greater manpower and surveillance, but it *does not* equal greater security in general. Actual security depends on both the efforts of law enforcement personnel and the actual threat or risk that is presented.

⁵ Hearing before the United States House of Representatives Committee on Homeland Security, Subcommittee on Border and Maritime Security, Feb. 15 2011. Mr. Stana put it a little more blandly: "Resources that would be needed to absolutely prevent every single incursion would be something probably out of reasonable consideration."

⁶ *Id.* at p. 2.

- The current legislative mandate to gain “operational control” of the entire border is untenable and unnecessary.
- Congress’ mandate for operational control does not take risk into account, and is an inappropriate tool for measuring or managing border security.

Recommendations:

- Operational control, if measured by the prevention of all illegal entries as in the Secure Fence Act, is an impractical goal for the entire border, and should not be the metric used for assessing overall border security.
- Border Patrol should retain discretion to deploy their resources, with the goal of increasing surveillance and response capacity in areas of higher risk.
- Congress should defer to the expertise of Customs and Border Patrol in defining and managing border security, including how to deploy resources to achieve high levels of operational control in high-traffic corridors.