

However, had I been present, I would have opposed this nominee, as I did when his nomination was considered by the Committee on Indian Affairs, on which I serve. I would like to take a few moments to explain why I do not support this nomination.

Ordinarily, I believe the President has the right to choose who will serve in his administration. The position of Special Trustee for American Indians is unique, however. Congress created the position of Special Trustee in 1994 in large part because of the historical failure of the Department of the Interior to live up to the Federal Government's trust responsibility to Native Americans. The Special Trustee was and is intended to be an advocate on behalf of tribes and individual Native Americans to ensure that those trust duties are met. In my view, Native Americans deserve someone in this position in whom they can have confidence. Regrettably, Mr. Swimmer is not that person.

Many tribal leaders from my State have shared with me their very deep concern that Mr. Swimmer would not be an independent voice and advocate on behalf of Native Americans within the Department of the Interior. In fact, under previous administrations and in recent months, he has been an integral part of the Department of the Interior team that has sought to implement trust management reforms without the full support of and consultation with the Native Americans whose assets they manage. To many of my Native American constituents, this is akin to allowing the fox to guard the henhouse.

Nevertheless, Mr. Swimmer has now been confirmed by a majority of the Senate to serve as Special Trustee for American Indians, and I wish him success in that position. He has made a commitment to me and others to consult with tribes in a timely and meaningful way, and I will certainly be working with Mr. Swimmer to ensure that is the case.

#### WAR CRIMINALS

Mr. KYL. Madam President, I rise in support of the goal of this nonbinding resolution, which is to promote bringing Saddam Hussein and his war criminals to justice.

In reading the language of the resolution, I note that it does not preclude the United States itself from detaining or from prosecuting Iraq war offenders of any nationality before a United States military tribunal or some other American-arranged forum.

It also does not preclude a new Iraqi government from prosecuting these criminals in an Iraqi tribunal if it is deemed that this is feasible and likely to result in substantial justice. The resolution also does not in any way mandate constitution of an international tribunal, something which the United States should oppose, as it would preclude the death penalty.

With this understanding, I support the resolution.

#### TRIBUTE TO MAJOR GENERAL A. BOWEN BALLARD

Mr. SESSIONS. Madam President, I take this opportunity to recognize the retirement of a friend and outstanding Air Force Officer, Major General A. Bowen Ballard. Major General Ballard's superior and exceptionally distinguished Air Force career warrants comment as the Air Force says thank you and goodbye to one of its best.

Major General Ballard has served this Nation and the United States Air Force for more than 37 years. His service has been marked by increasingly demanding command and staff positions, culminating as the Mobilization Assistant to the Commander, Air University, Maxwell AFB, AL.

Throughout his military service, Major General Ballard has served with distinction and honor. It is my privilege to recognize his many significant contributions and to commend him for his outstanding service. A son of Alabama, Major General Ballard grew up in Montgomery and attended elementary and junior high school in Cloverdale. After graduating from Lanier High School, he enlisted in the Alabama Air National Guard as an intelligence specialist, while at the same time he attended the University of Alabama earning a degree in business and finance.

In 1966, he was commissioned and resumed his service in Air Force Intelligence. Major General Ballard attended the Air Intelligence School at Lowry Air Force Base, CO, and from 1967 until 1974, he filled various intelligence positions with the 187th Tactical Reconnaissance Group, Alabama Air National Guard.

Leaving the Alabama Air National Guard and joining the Air Force Reserve in 1974, Major General Ballard was assigned to the Air Force Intelligence Service at Fort Belvoir, VA, where he played a key role in transitioning Air Force Special Operation Forces from the Tactical Air Command to the Military Airlift Command and participated with Air Force Special Operation Forces on an international basis. Major General Ballard was involved with the North Atlantic Treaty Organization and the United States European Command for many years.

During his assignment as the Mobilization Assistant to the Chief of Staff, Intelligence, Headquarters United States Air Force, Major General Ballard was recalled to active duty in a key position of leadership to manage the planning, directing, and establishing of policies and procedures for all USAF intelligence activities.

As the Mobilization Assistant to the Director of the National Security Agency/Chief, Central Security Services, Fort George G. Meade, MD, Major General Ballard's guidance and direction was critical in identifying and resolving critical issues affecting the Air Force during one of the most turbulent and demanding times in our history.

Major General Ballard frequently met with the senior military leadership, to include the Secretary of Defense, Secretary of the Air Force, the Chief of Staff of the Air Force, and members of the Senate and Congress, effectively presenting crucial positions involving specific operational intelligence and professional military education issues. He achieved unparalleled success in charting the strategic direction and employment concepts as the Chairman of the Assistant Secretary of Defense's Command, Control, Communication and Intelligence Steering Council. Major General Ballard represented commanders of the Air University and Air Force Space Command on numerous panels, boards, and work groups, including personally leading the development of creative and innovative improvements to the Joint Reserve Intelligence Program. Major General Ballard was directly responsible for identifying, developing and implementing a significantly new direction for Reserve Intelligence roles and missions in space operations. Under his untiring leadership, the Air Force Space Command Reserve Intelligence Program transformed into a vital partner in on-orbit space collection intelligence assessments.

As the Mobilization Assistant to the Commander, Air University, he assisted the commander with significant improvements to Air University schools in curricula and coursework, joint programs, faculty management, computer technology, and communications systems. As a result of his efforts, all graduates of Air Command and Staff College and Air War College now receive masters degrees in military science. Major General Ballard's leadership skills were constantly in high demand. For the Joint Chiefs, he developed the Joint Chiefs of Staff/Department of Defense Strategic Plan, providing unprecedented joint contingency support to operations in both Operation Noble Anvil and Operation Allied Force. For the combatant commanders, he applied his focus on language and distributed joint reserve component intelligence operations and implemented a flexible solution which paid significant dividends in the military theater of operations and in the global war on terrorism. Major General Ballard also established the foundation for joint cryptology reserve component support to the European and Pacific Command. The formulation and justification of cryptologic reserve support elements blossomed into greatly improved reserve component support in intelligence operations ensuring a significant reserve augmentation force well into the 21st century. Major General Ballard has demonstrated time and time again superior performance, planning, coordinating, directing, and managing of Air Force operational intelligence programs, and Air Force Reserve intelligence mission augmentation activities. Major General Ballard's

work with the Air University Integrated Program Review process resulted in significant increases in Individual Mobilization Augmentee positions to meet critical Air University mission needs. As a direct result, Air Reserve forces made significant and long-lasting contributions to successful Air University mission operations. From determining the effective and efficient use of Reserve Force personnel in war and during peacetime, to redefining roles, missions, force structure, training, morale, finance, recruiting, and retention, Major General Ballard always led from the front.

We wish to extend congratulations to Major General Ballard on the occasion of his retirement. We are honored to recognize his many accomplishments and ask that our colleagues in the United States House of Representatives join in recognizing his very worthy achievements.

#### NUCLEAR EARTH PENETRATOR WEAPONS: THE MYTH AND DANGER

Mr. AKAKA. Madam President, I rise today to discuss the myth and dangers posed by the nuclear earth penetrating weapons proposed by the Bush administration.

The administration suggests that new nuclear weapons could be needed to destroy a growing number of hard and deeply buried targets, HDBT. The Intelligence Community has estimated that there are over 10,000 potential HDBTs worldwide. Many of these are near the surface, serve tactical roles, and can be attacked with conventional weapons. But some hundreds of these targets have stronger concrete reinforcement, or are buried at great depths, or are in tunnels. They play a strategic role, protecting senior leaders, command and control centers, or stored weapons of mass destruction. Of particular concern are the very hardened or deeply buried HDBTs located in so-called rogue nations.

To attack the most deeply buried structures, the administration would like to have a nuclear weapon that could destroy a bunker some 300 meters, or about 1,000 feet, underground without causing substantial "collateral damage." The administration is proposing to explore two new nuclear weapons for attacking this category of targets. The first is the so-called Robust Nuclear Earth Penetrator, or RNEP for short. The second is a new class of low-yield nuclear warheads.

These two initiatives are often confused in the press or thought to be different versions of a mini-nuke bunker-busting nuclear weapon. The two candidates being considered by the administration for modification into a RNEP, the B61 and B83 bombs, have been in the U.S. arsenal for a number of years. They are not, however, low-yield weapons. In fact, they have yields in the tens of kilotons to megaton range.

Due to congressional concerns, the fiscal year 2003 Defense authorization

bill required the Department of Defense to deliver to the Armed Services Committees of both Chambers a report on the need for an RNEP before funds could be spent on the program. On March 19, 2003, the administration delivered the report. After a 30-day waiting period, the administration has said it will begin to study whether the B61 or B83 bombs can be modified into a RNEP. The administration plans to spend some \$15 million on this work in fiscal year 2004, and the study could cost as much as \$46 million.

As for low-yield nuclear weapons, these are nuclear weapons with an explosive yield of less than 5 kilotons. Ten years ago, Congress placed a prohibition on "research and development" that could lead to the production of a new low-yield nuclear weapon in the fiscal year 1994 Defense Authorization Act. In the early 1990s, advocates of low-yield weapons claimed that precision strikes with such weapons could be used to attack weapons of mass destruction in third-world states that had acquired them. Congress was concerned that the development of such weapons would send the wrong message about the U.S. commitment to non-proliferation. In addition, there were fears that if such weapons were developed, the firewall between nuclear and conventional weapons would be removed.

The administration now seeks to remove the prohibition on research on low-yield weapons research. The administration's Nuclear Posture Review calls for exploring new nuclear weapons "concepts" to be able to attack HDBTs with reduced collateral damage. According to the administration, the congressional restriction on research on low-yield nuclear weapons "impedes this effort."

Ignoring the policy implications of making a nuclear weapon an acceptable tool to be used like a conventional weapon, there is still the critical question of whether such a weapon could destroy a deeply buried target without massive collateral damage. Could a weapon burrow so deep that its nuclear explosion could be safely contained within the Earth? The short answer to this question is no.

To be a bunker buster, the weapon design must protect the warhead and associated electronics while it tunnels into the ground. This severely limits the missile to smaller impact velocities, which, in turn, severely limits how far down it can go. In fact, limits on material strengths make 50 feet about the maximum depth to which a missile could penetrate into dry rocky soil while maintaining its integrity until the warhead detonates.

The radioactive fallout from a nuclear weapon detonated at a maximum depth of 50 feet could not be contained. Even a low-yield nuclear weapon of 0.1 kiloton, according to Princeton physicist Robert Nelson, must penetrate about 230 feet underground for the explosion to be fully contained. Based on

the experience of U.S. underground tests at the Nevada Test Site, a 5-kiloton explosive has to be buried at least 650 feet to be fully contained. A 100-kiloton explosive must be at least 1,300 feet deep.

To comprehend what would happen if a nuclear bunker-busting weapon were used, consider the damage that would result from the use of a "low-yield" 1-kiloton warhead. Such a weapon would be one-thirteenth the size of the atomic bomb dropped over Hiroshima, and of a size that may be pursued if the congressional prohibition on research on low-yield weapons is removed. At the maximum depth possible of 20 to 50 feet, a 1-kiloton warhead would eject more than 1 million cubic feet of radioactive debris from a crater bigger than a football field. If such low-yield weapons were used to attack a HDBT in or near a city, it could devastate the area. There would be major collateral damage because the ejected radioactive debris would create a lethal gamma-radiation field over a large area.

For the shock of a nuclear explosion to reach a hardened target at 1,000 feet, a much larger warhead would be required, like the B61 and B83 bombs being considered for the RNEP. But the B61 and B83 bombs would dig a much larger crater and create a substantially larger amount of radioactive debris, causing that much more radioactive fallout and devastation.

I also am concerned about the logistical problems of using nuclear weapons in a combat setting. Destroying bunkers requires knowing exactly where they are and delivering a weapon with precision and accuracy. During Operation Enduring Freedom, American Special Forces were used as spotters on the ground near the targets to provide the intelligence necessary to strike suspected al-Qaida command bunkers and weapon depots. Our Special Forces would be in great danger if on-the-ground spotting were required for nuclear bunker busters.

As we have seen in our efforts to target Saddam Hussein, his bunker complexes are often located inside Baghdad. Leaders of other "rogue states" can be expected to construct their command and control centers inside their capital cities too. The potential for collateral damage to our troops and the public our forces are liberating are obvious.

Another consideration is battlefield assessment. Some bomb damage assessment can be done from the air, but if a closer look is needed, how soon could troops be sent in to determine if the strike was successful? The answer depends on the importance we place on the safety and health of our forces. If we use the underground Nevada Test Site as one real-world example, it will be a very long time. If battle planners need assessment more quickly, or we need to recover evidence of what was contained in a bunker, then American soldiers and marines will be put at risk.