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Open Service and Our Allies: A Report on the Inclusion of Openly Gay and Lesbian Servicemembers in U.S. Allies' Armed Forces

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OPEN SERVICE AND OUR ALLIES: A REPORT ON THE
INCLUSION OF OPENLY GAY AND LESBIAN
SERVICEMEMBERS IN U.S. ALLIES' ARMED FORCES

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EXECUTIVE SUMMARY

In the wake of the Obama Administration's pledge to repeal "Don't Ask, Don't Tell" in the United States, the Columbia Law School Sexuality & Gender Law Clinic undertook a review of how allies of the United States moved from a policy of banning gay and lesbian servicemembers from serving in the armed forces to a policy of allowing these servicemembers to serve openly ("open service"). In documenting this review, this report aims to provide information about the decision to implement open service and the mechanics of the transition to open service in Australia, Canada, Israel, and the United Kingdom. In addition to addressing concerns about the effect of open service on unit cohesion and morale, this report also includes information about how the militaries of Australia, Canada, Israel, and the United Kingdom have implemented their open service policies on the ground. The report examines, as well, the ways in which U.S. soldiers have worked as part of multinational forces with members of other militaries that have open service policies.

Open Service and Our Allies shows that no significant problems have arisen as a result of a transition to open service. Notably, not one country studied in this report has made any changes to its housing or bathrooms. Moreover, although all of the countries studied in this report have reported scattered incidents of harassment, this report also shows that there has been no pervasive discrimination against or harassment of gay and lesbian servicemembers. Whereas some countries achieved a successful transition through educational and sensitivity training, others have not addressed harassment of gay and lesbian servicemembers in their trainings. The common thread,

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† Donna Azoulay, Jeannie Chung, Jennifer Simcovitch, Swathi Sukumar, and Jantira Supawong are the student-authors of *Open Service and Our Allies*, which was first published as a report of the Columbia Sexuality & Gender Law Clinic. Thanks in addition to Professor Jackie Gardina, Tom Field, Officer Stuart O'Brien, Eli Kaplan-Wildman, Michelle Douglas, Dr. Aaron Belkin, Dr. Nathaniel Frank, the staff of the Palm Center at the University of California, Santa Barbara, and to Erin Meyer for her research assistance.

instead, has been an emphasis on strong leadership and a clear statement of the behavior that is expected of servicemembers. This report also shows that none of the countries studied have experienced a decline in unit cohesion or morale. To the contrary, many of the countries studied have seen an increase in morale due to servicemembers' increased ability to focus on work, rather than on hiding their sexual orientation, and a decrease in paranoia and suspicion as a result of the new open environment.

Overall, this report shows that the transition to open service in Australia, Canada, Israel, and the United Kingdom was smooth, although not always flawless, and provides some insight into what such a transition might look like in the United States.

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INTRODUCTION

A. *Background*

The “Don’t Ask, Don’t Tell” law,¹ in place since 1993, prohibits openly gay and lesbian individuals² from serving in any of the United States military forces. Congress enacted this policy in a move away from the previous military policy declaring that “homosexuality is incompatible with military service.”³ In January 2010, President Obama and several high-ranking military officials called for the repeal of “Don’t Ask, Don’t Tell.”⁴ Congressional hearings were held,⁵ and a Pentagon report was issued on November 30, 2010 examining how implementation of a new, open policy would take place.⁶ Before

1. 10 U.S.C. § 654 (1993).

2. This report refers to gay, lesbian, and bisexual individuals and servicemembers as “gay and lesbian” collectively.

3. DEP’T OF DEF. DIRECTIVE NO. 1332.14(1)(H)(1)(a), ENLISTED ADMINISTRATIVE SEPARATIONS (Jan. 28, 1982), available at <http://dont.stanford.edu/regulations/regulation41.html>.

4. Elisabeth Bumiller, *Top Defense Officials Seek to End “Don’t Ask, Don’t Tell,”* N.Y. TIMES, Feb. 2, 2010, <http://www.nytimes.com/2010/02/03/us/politics/03military.html>; Obama Calls for “Don’t Ask, Don’t Tell” Repeal, CNN.COM, Jan. 27, 2010, http://articles.cnn.com/2010-01-27/politics/obama.gays.military_1_repeal-policy-that-bars-gays-servicemembers-legal-defense-network?_s=PM:POLITICS.

5. Luis Martinez, *Don’t Ask Don’t Tell Hearing—Mullen Strong on Repeal—UPDATED*, ABCNEWS.COM POLITICAL PUNCH BLOG, Feb. 2, 2010, <http://blogs.abcnews.com/politicalpunch/2010/02/don-t-ask-don-t-tell-hearing---mullen-strong-on-repeal.html>.

6. DEP’T OF DEF., REPORT OF THE COMPREHENSIVE REVIEW OF THE ISSUES ASSOCIATED WITH A REPEAL OF “DON’T ASK, DON’T TELL” (2010), available at http://www.washingtonpost.com/wp-srv/special/politics/don-t-ask-don-t-tell/DADTRreport_FINAL/pdf;

the end of 2010, Congress had passed a bill to repeal “Don’t Ask, Don’t Tell,” and President Obama signed the repeal into law on December 22, 2010.⁷ The law provides that the repeal will be implemented only after a certification process has been completed and an additional sixty-day waiting period has passed.

B. Purpose

This report is intended to illustrate to Congress and other interested parties how the United States military might go about implementing the repeal of the current “Don’t Ask, Don’t Tell” ban by examining the experiences of four U.S. allies. These allies, Australia, Canada, Israel, and the United Kingdom, all had similar bans in effect and have since removed them. Through concrete examples from these allies’ experiences, this report demonstrates how the transition to open service has proceeded elsewhere and how it would likely proceed in the United States.

C. Methodology

This report studies the process of integration of openly gay and lesbian servicemembers into the militaries of Australia, Canada, Israel, and the United Kingdom. These countries were selected because each had informal or formal prohibitions against openly gay and lesbian people serving in the armed forces, and because each engages in military operations similar to those of the U.S. armed services. Each of these countries has removed its prohibition at some point in the course of the last three decades.

The issues-based analysis here, with particular attention to unit cohesion, living conditions, training of servicemembers, sexual harassment and anti-discrimination policies, and relationship recognition, likewise tracks concerns that have arisen in discussions of “Don’t Ask, Don’t Tell.” These issues are among the most important determinants of effective transition to open service and will be integral to the implementation of “Don’t Ask, Don’t Tell”’s repeal.

The report is based on three sources of information. First, it relies on documents published by the ministries of defense in the

Ed O’Keefe & Craig Whitlock, “Don’t Ask, Don’t Tell” Report: Little Risk to Allowing Gays to Serve Openly, WASH. POST, Nov. 30, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/11/30/AR2010113003935.html>.

7. Karen Parrish, *President Signs “Don’t Ask” Repeal Act into Law*, AM. FORCES PRESS SERV., Dec. 22, 2010, <http://www.defense.gov/news/newsarticle.aspx?id=62213>. At the signing ceremony, President Obama remarked, “We are not a nation that says, ‘Don’t ask, don’t tell’ . . . We are a nation that says, ‘Out of many, we are one.’” *Id.*

respective countries that address the transition and current policies regarding gay and lesbian servicemembers. Second, it has extracted information published in newspapers and other periodicals, accessed either through their websites or through LexisNexis, an online database. Third, it uses information gathered from interviews with current and former servicemembers from the respective countries. These interviews have been conducted in person, over the telephone, or by written response to a questionnaire drafted by the Columbia Law School Sexuality & Gender Law Clinic.⁸

The questionnaire asked a range of open-ended questions regarding the issues covered in this report. It was worded to elicit information without influencing the opinion of the respondents. The questionnaire was circulated among current and former servicemembers in Australia, Canada, Israel, and the United Kingdom through various channels of contact.

The report is the independent academic work of the Columbia Law School Sexuality & Gender Law Clinic. It was not funded in any part by any outside agency or organization.

D. Roadmap

As noted above, this report traces the experiences of Australia, Canada, Israel, and the United Kingdom through their transitions and addresses five specific areas of concern: unit cohesion, living quarters, education and training, sexual harassment and anti-discrimination policies, and relationship recognition. The report also includes a separate section describing multinational forces in which American soldiers serve alongside soldiers from countries that allow openly gay and lesbian individuals to serve. Finally, the report includes recommendations for the United States culled from the results of the research just described.

I. HISTORICAL AND POLITICAL BACKGROUND

This section provides background information on the bans on open service previously in place in Australia, Canada, Israel, and

8. In the United Kingdom, a directive was issued by the Deputy Chief of Defence Staff prohibiting servicemembers from answering the questionnaire. U.K. MINISTRY OF DEFENCE DIRECTIVE, QUESTIONNAIRE ON SEXUAL ORIENTATION FROM COLUMBIA LAW SCHOOL SEXUALITY AND GENDER CLINIC (Mar. 9, 2010) (on file with author). The Columbia Law School Sexuality & Gender Law Clinic submitted an appeal letter to the Directive, which remained pending at the time this report was issued. Letter from Columbia Law School Sexuality & Gender Law Clinic to U.K. Ministry of Defence (Apr. 13, 2010) (on file with author). As a result of the Directive, the Clinic was unable to carry out as many interviews of U.K. servicemembers as of servicemembers from other countries studied in this report.

the United Kingdom and discusses the history and circumstances under which these bans were lifted.

A. Australia

In 1986, the Australian Defence Force implemented a ban on gay and lesbian personnel serving openly in the military through a military policy that guided commanding officers to discretely ask gays and lesbians to resign.⁹ The military put forth four justifications for the ban: 1) negative impact on morale; 2) need to protect minors; 3) concern about public health, namely, the risk of HIV infection; and 4) concern about national security.¹⁰

In 1990, Anita Van Der Meer, a junior naval officer, was reported by one of her peers as being involved in a same-sex relationship.¹¹ The navy subsequently threatened her with discharge for being a lesbian.¹² To preserve her employment, she denied the charge, which caused great emotional turmoil for her.¹³ Recalling her experience, she said, "It was very traumatic for me, but I still had the cooperation of my supervisors and my peers In the end, I had more support than I expected."¹⁴

After she denied the charge, Van Der Meer brought a complaint against the Australian Defence Force to the Australian Human Rights and Equal Opportunity Commission, an organization outside of the military created by Parliament in 1986.¹⁵ The Commission did not have the authority to lift the ban itself but, as a result of Van Der Meer's complaint, it put pressure on the government to do so.¹⁶ Veterans groups, however, such as the Returned & Services League and the Armed Forces Federation of Australia, strongly opposed the

9. U.S. GEN. ACCOUNTING OFFICE, GAO/NSIAD-93-215, HOMOSEXUALS IN THE MILITARY: POLICIES AND PRACTICES OF FOREIGN COUNTRIES 19 (1993), available at <http://dnt.stanford.edu/regulations/GAO/pdf> [hereinafter GAO REPORT]; see also Hugh Smith, *The Dynamics of Social Change and the Australian Defence Force*, 21 ARMED FORCES & SOC'Y 531, 544 (1995) (noting that one general remarked that "[h]omosexual behaviour is not accepted or condoned in the Defence Force" (quotation marks omitted)).

10. Smith, *supra* note 9, at 544.

11. David Crary, *U.S. Allies Embrace Gay Military Personnel*, HUFFINGTON POST, July 13, 2009, http://www.huffingtonpost.com/2009/07/13/us-allies-embrace-gay-mil_n_231075.html.

12. *Id.*

13. *Id.*

14. *Id.* (quotation marks omitted).

15. William Branigin, *Australia to U.S.: It's No Big Deal: Military Adjusting to New Policy Allowing Homosexual Troops*, WASH. POST, Mar. 30, 1993, at A6; Smith, *supra* note 9, at 544.

16. Smith, *supra* note 9, at 544-45.

proposal to lift the ban.¹⁷ Many servicemembers within the military protested as well; surveys done during this time indicated at one point that approximately eighty percent of servicemembers opposed lifting the ban.¹⁸ Nonetheless, the Cabinet, after much debate, lifted the ban in November 1992.¹⁹

The transition to open service in Australia proved to be largely uneventful. As discussed in detail in Parts II and V of this report, military officials reported no significant increases in harassment by or of gay and lesbian servicemembers.²⁰ In fact, unit cohesion and morale reportedly improved because gay and lesbian servicemembers could develop relationships built on trust and honesty more profoundly with their fellow soldiers than they could prior to the ban being lifted.²¹ To facilitate the transition and maintain a well-ordered work environment, the Defence Gay and Lesbian Information Service, an organization recently formed by gay and lesbian servicemembers, provides information to all personnel about Australian Defence Force policies relating to gay and lesbian personnel.²² Also, gay and lesbian servicemembers, with the Australian Defence Force's non-funded approval, have marched in three annual Sydney Mardi Gras parades as well as gay pride parades in Brisbane and Melbourne.²³

B. Canada

Before Canada lifted its ban on gay and lesbian servicemembers in the military, it had a "policy against 'knowingly' hiring or promoting lesbians and gays."²⁴ In 1992, however, a lawsuit initiated by Michelle Douglas, a former servicemember who was honorably discharged from the Canadian military for being a lesbian, led to the lifting of the ban.²⁵ Indeed, one writer observed that the Canadian

17. *Id.* at 545.

18. *Id.*

19. See Branigin, *supra* note 15, at A6 (explaining that "the cabinet decided to remove the ban over objections from the defense minister and service chiefs that unit cohesion and command would be eroded").

20. See *infra* notes 41-58, 121-32 and accompanying text.

21. *Id.*

22. DEFGLIS—*About Us*, DEFENCE GAY & LESBIAN INFO. SERV., <http://www.defglis.com.au/index.php?id=aboutUs> (last visited Mar. 28, 2011).

23. *Farewell from our Secretary*, DEFENCE GAY & LESBIAN INFO. SERV. (DEFGLIS, Australia), Apr. 19, 2010, at 2, available at <http://www.defglis.com.au/Newsletters/2010-2.pdf>.

24. Stephen Bindman, *Military to Lift its Ban on Gays, Lesbians*, TORONTO STAR, Oct. 10, 1991, at A1.

25. Anne Swardson, *Canada: No Problem with Gays in Ranks: Military's Restrictions Lifted Last Fall*, WASH. POST, July 6, 1993, at A8.

Federal Court decision in *Douglas v. Canada*²⁶ striking down the ban as a violation of Canada's Charter of Rights and Freedoms "prompted more openly gay men and women to join the ranks of the [Canadian] Army, Air Force and Navy."²⁷

To implement the removal of the ban on gay men and lesbians serving openly in the Canadian military and to ensure a smooth transition, Canada took several steps. Primary among these was that military leaders stressed that all servicemembers had to act in accordance with the new rule, regardless of their personal beliefs or values.²⁸ This move was consistent with military protocol, which regularly requires servicemembers to comply with military rules regardless of their views.²⁹ By describing the ban as a change to the way servicemembers must *behave* (i.e., no discrimination, unequal treatment, or harassment of individuals solely because they are gay), rather than as a change to what servicemembers must *believe*, the transition was more easily made.³⁰

In addition to emphasizing that the policy focuses on changes in behavior, as opposed to changes in individual beliefs, the Canadian military issued a "Post-Announcement Action" by the Assistant Deputy Minister of Personnel³¹ "to provide military leaders with guidance to 'communicate the rationale for the change, encourage its acceptance, and respond to the personal concerns of the [Canadian

26. *Douglas v. Canada* (1992), [1993] 1 F.C. 264, (Can. Ont.).

27. Tobi Cohen, *Canada Quietly Marks Anniversary for Gays in Military While U.S. Debate Rages*, CANADIAN PRESS, Oct. 24, 2009, available at <http://www.canadaeast.com/front/article/832812>.

28. Aaron Belkin & Jason McNichol, *Homosexual Personnel Policy in the Canadian Forces: Did Lifting the Gay Ban Undermine Military Performance?*, 56 INT'L J. 73, 77 (2001); see also YVETTE C. HOPKINS, SCH. ADVANCED MILITARY STUDIES, OUT OF THE CLOSET: ADDRESSING POLICY OPTIONS 22, available at <http://www.dtic.mil/cgi-bin/GetTRDoc?AD=ADA393883&Location=U2&doc=GETTRDoc.pdf> (discussing the implementation and transition to open service in the Canadian forces).

29. See Belkin & McNichol, *supra* note 28, at 82 (noting that "[e]ven though some soldiers feel hatred towards their homosexual peers, the military's expectation of professional conduct seems to have been sufficient to prevent individual beliefs from undermining military effectiveness"); see also Luke Fisher, *Armed and Gay: Homosexuals in the Military Face an Uneasy Welcome*, MACLEAN'S, May 24, 1993, at 15 (describing an officer's understanding that "no wavering on the policy will be tolerated" despite individual service members' personal feelings).

30. See Belkin & McNichol, *supra* note 28, at 87 (explaining that "[t]he personal attitudes and decisions of individual soldiers would be respected, but soldiers would be expected to put personal feelings aside to accomplish military objectives and to uphold the law"); see also Georgetown Univ. Law Ctr. Panel, *Sexual Orientation and Military Preparedness: An International Perspective*, Comments of Michelle Douglas at 54:53, Mar. 12, 2008, [hereinafter Georgetown Univ. Law Ctr. Panel], available at <http://www.youtube.com/watch?v=TEmSDmuk-J8> (discussing how the Canadian military distinguished between telling people what to believe and how they must behave).

31. HOPKINS, *supra* note 28, at 22-23.

Forces'] members.”³² In addition, the military also disseminated a Canadian Forces Personnel Newsletter, which is distributed to all active servicemembers, describing the policy change.³³ The “Post-Announcement Action” and the Newsletter brought the policy to the ground in an accessible way by showing, tangibly, how the policy would work.³⁴ This demonstration turned out to be very important in ensuring a smooth transition for the servicemembers.³⁵

In sum, the steps taken by then-Chief of Defence General de Chastelain and other military leaders to create a smooth transition included:

- (1) “[Eliminating] any distinction in the regulations between heterosexual and [gay, lesbian, and bisexual] soldiers.”³⁶
- (2) “[Making] it clear that the policy change had the full support of the military leadership.”³⁷
- (3) “[Outlining] the standards of behaviour that would be expected of all military personnel, regardless of sexual orientation, and distribut[ing those] new standards and regulations widely.”³⁸
- (4) “[Emphasizing] the distinction between beliefs and behaviour.”³⁹
- (5) Encouraging respect for “personal attitudes and decisions of individual soldiers,” but expecting soldiers “to put personal feelings aside to accomplish military objectives and to uphold the law.”⁴⁰

C. Israel

When Israel was founded in 1948, it did not have any restrictions on gay and lesbian soldiers serving in the military. In 1983, however,

32. *Id.*

33. *Id.* at 23.

34. *Id.* at 22-23.

35. *Id.* at 22.

36. Belkin & McNichol, *supra* note 28, at 87.

37. *Id.*; see also HOPKINS, *supra* note 28, at 22 (recalling General de Chastelain’s press report in which he declared that “the Canadian Forces will comply fully with the Federal Court’s decision. Canadians, regardless of their sexual orientation, will now be able to serve their country without restriction”).

38. Belkin & McNichol, *supra* note 28, at 87; see also Swardson, *supra* note 25, at A8 (describing the training programs implemented).

39. Belkin & McNichol, *supra* note 28, at 87; see also Georgetown Univ. Law Ctr. Panel, *supra* note 30, Comments of Michelle Douglas at 54:53, (discussing how the Canadian military distinguished between telling people what to believe and how they must behave).

40. Belkin & McNichol, *supra* note 28, at 87; see also Fisher, *supra* note 29, at 15 (describing officers’ understanding that “no wavering on the policy will be tolerated,” despite their personal feelings).

the military changed its policy to prevent gay and lesbian servicemembers from serving in intelligence positions.⁴¹ The Israeli military restricted these servicemembers' access to intelligence positions under the theory that their sexuality would "prove to be a security hazard."⁴² At that time, gay and lesbian servicemembers were not excluded from holding any other positions.

However, the Israeli military did not enforce the restriction on gay and lesbian servicemembers in the intelligence services⁴³ and, in 1993, the prohibition on gay and lesbian servicemembers serving in intelligence positions was repealed.⁴⁴ That year, the Knesset subcommittee that dealt with gay and lesbian rights held a conference to highlight inequality under Israeli law.⁴⁵ At this conference, Uzi Even, a former colonel in the Israeli military, testified that he had lost his rank and his security clearance when his sexual orientation was discovered.⁴⁶ Colonel Even, who had conducted classified military research for fifteen years, testified that he was not a security threat because he was open about his sexual orientation.⁴⁷ His testimony garnered significant attention and led the Knesset's military committee to remove the restrictions of the 1983 policy.⁴⁸

Currently, the Israeli military does not make any effort to identify gay and lesbian servicemembers. Gay and lesbian servicemembers, however, often do not reveal their sexuality to their commanding officers and their fellow soldiers until they are well established in the military.⁴⁹

D. United Kingdom

In September 1999, the European Court of Human Rights ruled that the United Kingdom's policy prohibiting all gay and lesbian military personnel, whether open or closeted, from serving in the armed forces was illegal.⁵⁰ As a result, in January 2000, the British

41. GAO REPORT, *supra* note 9, at 7.

42. *Id.* at 40-41.

43. *Id.*

44. *Id.* at 41.

45. *Id.* at 40.

46. Aaron Belkin & Melissa Levitt, *Homosexuality and the Israel Defense Forces: Did Lifting the Gay Ban Undermine Military Performance?*, 27 ARMED FORCES & SOC'Y 541, 543 (2001).

47. *Id.*

48. *See id.* at 543-44 (noting that "Prime Minister Rabin declared, 'I don't see any reason to discriminate against homosexuals,' and called for a military committee to explore the matter").

49. GAO REPORT, *supra* note 9, at 42.

50. *Lustig-Prean & Beckett v. United Kingdom*, 29 Eur. Ct. H.R. 548 (2000); *Smith & Grady v. United Kingdom*, 29 Eur. Ct. H.R. 493 (1999).

government lifted the prohibition and began allowing openly gay and lesbian people to serve in the armed forces.⁵¹

Attitudes in the armed forces have changed dramatically since the removal of the prohibition. Gay and lesbian servicemembers are now well integrated in the armed forces. Six months after the ban was lifted, the Ministry of Defence (MOD) issued a confidential report that stated:

There is widespread acceptance of the new policy. It has not been an issue of great debate. In fact, there has been a marked lack of reaction. Generally there has been a mature, pragmatic approach which allowed the policy to succeed. The change in policy has been hailed as a solid achievement.⁵²

Further, “[i]n what many gay Service personnel see as a mark of official acceptance, members of the Navy were permitted to march in uniform at the annual Gay Pride march in London in 2006, the first time any Armed Service had granted such permission.”⁵³ The next year, the Royal Air Force followed suit, and the Army allowed uniforms to be worn in the march in 2008,⁵⁴ a sign of the significant change in the Army’s outlook since the lifting of the ban in the last decade.

II. UNIT COHESION, MILITARY PERFORMANCE, AND MORALE

This section examines the extent to which the transition to open service had consequences for unit cohesion and morale in the armed forces of Australia, Canada, Israel, and the United Kingdom. In all cases, no negative effect on military cohesion and morale was reported after the bans were lifted. In fact, unit cohesion and morale were reported to have improved significantly in these countries after the transition to open service. This improvement in morale and unit cohesion has been attributed to a deeper relationship of honesty and trust that

51. *MOD Ends Its Ban on Gays in the Military*, BIRMINGHAM POST (U.K.), Jan. 13, 2000, at 6.

52. Ben Summerskill, *It’s Official: Gays Do NOT Harm Forces: Six Months On, Confidential MoD Report Reveals No Adverse Effects on Morale*, OBSERVER (U.K.), Nov. 19, 2000, at 5.

53. Tom Coghlan, *The Fuss of Ten Years Ago Seems Somewhat Bizarre*, TIMES (London), Jan. 16, 2010, at 101.

54. *Id.*; see also Damian Barr & Lucy Bannerman, *Soldiers Can Wear Their Uniforms with Pride at Gay Parade, Says MoD*, TIMES (London), June 14, 2008, <http://www.timesonline.co.uk/tol/news/politics/article4133763.ece> (reporting that “[i]ndividuals from all three services will now be able to celebrate their profession and sexuality at the same time [at the parade] without fear of facing disciplinary action”).

developed among servicemembers after the transition to open service, which has enabled all military personnel to maintain their focus on their professional duties within the military.

A. *Australia*

After November 1992, when the ban was lifted,⁵⁵ reports from military officials indicated that the transition was largely a non-event and that controversy over the lifting of the ban soon disappeared.⁵⁶ Lieutenant Colonel Ray Martin, a thirty-seven-year-old army officer, said, "We're a conservative institution, and there is some residual angst with the policy . . . [but t]here haven't been any adverse effects that we're aware of. It's been a seamless transition as far as I can see."⁵⁷

Likewise, Greg Austin, a senior Defence Department staff member, commented, "The effect in the armed forces has been negligible so far."⁵⁸ Neil James of the Australian Defence Association, a security think tank, recalled, "Everyone said, 'Good heavens, that's a bit of a surprise' and after five minutes the conversation reverted back to football After a while it was met with a collective yawn."⁵⁹

In 2000, Bronwen Grey, then-Director of the Defence Equity Organisation, an internal military office that monitors and enforces the sexual harassment and anti-discrimination policies of the Australian military, stated that the transition was a "non-event" and had no adverse impact on military cohesion or performance.⁶⁰ When her interviewers asked her to describe specific observations, she replied, "All I can say is [that] . . . nothing happened. And it's very hard to document nothing."⁶¹ One servicemember who did experience some harassment based on his sexual orientation stated, "The problem I had, although major to me, had no bearing on overall unit cohesion or morale."⁶²

55. *Many U.S. Allies Accept Gays in Military and Find Brouhaha Here Baffling*, CHI. TRIB., Jan. 28, 1993, at 2.

56. *Id.*

57. Branigin, *supra* note 15, at A6.

58. *Id.*

59. Crary, *supra* note 11.

60. AARON BELKIN & JASON MCNICHOL, CTR. FOR THE STUDY OF SEXUAL MINORITIES IN THE MILITARY, THE EFFECTS OF INCLUDING GAY AND LESBIAN SOLDIERS IN THE AUSTRALIAN DEFENCE FORCES: APPRAISING THE EVIDENCE 17 (2000), available at http://www.palmcenter.org/files/active/0/Australia_Final_Report.pdf.

61. *Id.*

62. Questionnaire Response of Leading Aircraftsman Troy D. Jorgensen, Australian Defence Force, Columbia Law Sch. Sexuality & Gender Law Clinic (Apr. 7, 2010) (on file with author).

In addition, both the United States and Great Britain observed that Australia's open service transition incurred no negative consequences. Seven months after the ban was lifted, the United States General Accounting Office ("GAO") interviewed Australian Defence Force officials to inquire about the nature of the transition. The 1993 report noted that "no reported changes have occurred in the number of persons declaring his or her sexual preference or the number of recruits being inducted . . . [and that] early indications are that the new policy has had little or no adverse impact [on unit cohesiveness]." ⁶³

In February 1996, the U.K. Ministry of Defence also researched the personnel policies of foreign militaries after a transition to open service. The delegation, which traveled to Australia to conduct its review, reported that Australian military personnel "believed that the change had not resulted in any notable problems for military functioning." ⁶⁴

Even opponents agree that there has been no adverse effect on military performance or morale. Retired Major General Bill Crews, the former President of the Returned and Services League, a veterans' organization in Australia, said:

I was there in the early days . . . I thought there'd be a continuing problem because of prejudice that exists in parts of the community . . . I don't see any evidence now that homosexuals are in any way discriminated against. . . . A homosexual can be just as effective a soldier as a heterosexual. ⁶⁵

Major General Peter Philips, President of the Returned and Services League in 2000, echoed, "[gays serving in the military has] not been a significant public issue. The Defence Forces have not had a lot of difficulty in this area." ⁶⁶

Indeed, unit cohesion among Australian servicemembers has improved substantially by the lifting of the ban. Military personnel interviewed by Aaron Belkin, Associate Professor of Political Science at the University of California, Santa Barbara, and by the Columbia Law School Sexuality & Gender Law Clinic, indicated that open service has enhanced unit cohesion, military performance, and morale. ⁶⁷ Specifically, the interviewed personnel reported that open service has

63. GAO REPORT, *supra* note 9, at 19.

64. U.K. MINISTRY OF DEFENCE, REPORT OF THE HOMOSEXUALITY POLICY ASSESSMENT TEAM 227, H1-1 (Feb. 1996) (on file with author).

65. Crary, *supra* note 11.

66. BELKIN & MCNICHOL, *supra* note 60, at 27 (citation omitted).

67. *Id.* at 32, 34; *see also* Questionnaire Response of Chief Petty Officer Stuart O'Brien, Australian Defence Force, Columbia Law Sch. Sexuality & Gender Law Clinic (Mar. 25, 2010) (on file with author) ("Morale within units has improved and unit cohesion is at its [sic] highest. Our personnel seem to be more relaxed and more honest with each other, allowing ever[y] [sic] member to get on with their core duties.").

allowed gay and lesbian servicemembers “to spend less time monitoring their comments and more time focusing on their work.”⁶⁸ In addition, the sexual orientation of Australian military personnel “becomes integrated as one aspect of who they are, taken no more or less seriously than any other aspect of their lives.”⁶⁹ According to those interviewed, open service has also fostered an environment more sensitive to the equal treatment and opportunity of women and ethnic minorities, as well as of gay and lesbian servicemembers.⁷⁰

During a 2008 panel at the Georgetown University Law Center entitled, “‘Don’t Ask, Don’t Tell’: An International Perspective,” Chief Petty Officer Stuart O’Brien, a current servicemember who is also Chairperson of the Defence Gay and Lesbian Information Service and has served for over twenty years, stated, “Has [the transition to open service] had any impact? None at all. I, I think . . . because I can be honest with myself, I can be honest with everybody, so it’s made me a better person.”⁷¹

Other Australian servicemembers have also observed that open service has allowed “a stronger bond [among peers] to occur” because members can feel free to be themselves and “not put on a false façade.”⁷² O’Brien has also noted that, “when working alongside U.S. military personnel in Baghdad in 2006,” he learned that “[U.S. military personnel] valued the work that I did and that’s all that it comes down to at the end of the day. . . . Sexuality has nothing to do with anything any more within the services.”⁷³ Another servicemember emphasized the importance of trusting the competence and professionalism of other military personnel to unit cohesion:

[Open service] allows members to be honest. Trust is an integral part to any team oriented organisation, as we need to trust the person next to us to do their job . . . if someone can hide this part of [their] life, it raises the question of what else can they lie about. In my experience service members are more concerned with whether the person next to them can do their [job] competently and effective[ly].⁷⁴

68. See BELKIN & MCNICHOL, *supra* note 60, at 32 (quoting a servicemember who remarked that “[e]verything’s out in the open, no fear, no nothing, no potential of blackmail, no security implications . . . nothing”).

69. *Id.*

70. *Id.* at 32, 34.

71. Georgetown Univ. Law Ctr. Panel, *supra* note 30, Comments of Stuart O’Brien at 19:34.

72. Questionnaire Responses of Private Nathan Howarth and Signalman Michael Purdon, Australian Defence Force, Columbia Law Sch. Sexuality & Gender Law Clinic (Apr. 7, 2010) (on file with author).

73. Crary, *supra* note 11.

74. Questionnaire Response of Lieutenant Phil Murphy, Australian Defence Force, Columbia Law Sch. Sexuality & Gender Law Clinic (Apr. 7, 2010) (on file with author).

B. Canada

According to the GAO, unit cohesion, military performance, and morale have not been negatively affected since the ban was lifted in the Canadian Forces.⁷⁵ Since General de Chastelain issued the order in 1992 declaring that gay and lesbian servicemembers in the Canadian Forces could serve openly and restored the full rank of all those that had been subjected to difficult conditions, no change in military performance has been found.⁷⁶

Undertaken months after General de Chastelain's open service order to determine the effects of the open service policy, the GAO analysis found no resignations, no assaults, no sexual orientation-based hate crimes, and no problems involving recruitment, morale, or cohesion as a result of the policy change.⁷⁷ The GAO analysis also indicated that Canadian Department of National Defence officials and representatives of gay and lesbian advocacy groups considered the lifting of the ban to be a great advantage because gay and lesbian servicemembers no longer had to live in fear of their sexual orientation being discovered and their being discharged from the military.⁷⁸

In addition to the findings of the GAO report, a number of Canadian servicemembers who have spoken about the lifting of the ban found no significant effect on unit cohesion, military performance, or morale. Shortly after the ban was lifted in 1992, a retired brigadier general who served as director general for personnel policy in the Canadian Forces explained why Canada terminated the ban even before the *Douglas* case was decided:

"We would not have been able to prove that [homosexuality] had that deleterious effect on cohesion and morale that everyone talked about . . . Basically, we realized that we didn't have the evidentiary foundation. . . . It just wasn't there. I mean, you can't use the old cohesion and morale arguments just based on folklore. You have to be able to prove this stuff."⁷⁹

Michelle Douglas, the plaintiff in that case, reinforced this point: "Since [General de Chastelain's] order, every report, every analysis,

75. GAO REPORT, *supra* note 9, at 31-32.

76. Georgetown Univ. Law Ctr. Panel, *supra* note 30, Comments of Michelle Douglas at 52:24 (stating that General de Chastelain's order gave servicemembers back-pay and restored their dignity).

77. GAO REPORT, *supra* note 9, at 31-32.

78. *Id.* at 32. *But see id.* (noting that "[t]hey also believe, however, that many homosexuals will not openly express their sexual orientation because they will see no advantage gained in doing so").

79. John Lancaster, *Many Allies Allow Gays in the Military: Canada, Australia Are Latest to Drop Exclusionary Policy*, WASH. POST, Nov. 30, 1992, at A1.

every study that's looked at the effect of this decision and the order, has found that none of those dire predictions were realized, just as happened in Australia and in the U.K."⁸⁰

Moreover, Douglas noted that "there was no violence, no reduction in recruitment, no harassment and no one quit."⁸¹ Indeed, when the ban was lifted in 1992, General de Chastelain suggested that sexual orientation had not proven to be correlative with military performance. Specifically, at that time he stated that "[t]he Canadian Forces of today believe an individual's sexual orientation is irrelevant to whether or not that individual can perform his or her job."⁸² Finally, as Major-General Lewis MacKenzie put it, "[t]he impact on operational effectiveness is nil."⁸³

In addition to servicemembers speaking out about the non-effect of the policy change on unit cohesion and morale, some servicemembers indicated that perhaps the change was for the better. Former servicemember Corporal Barbara Hamilton stated that "a strict heterosexual environment must have *negatively* influenced unit cohesion."⁸⁴

In fact, since the lifting of the ban, the Canadian Forces have found an increase in effective performance. Before the ban was lifted, soldiers had difficulty advancing in their careers because rules barred the promotion of gay servicemembers. Now that the ban has lifted, without having to worry about being discharged, gay servicemembers are, with increasing frequency, rising in their ranks.⁸⁵ Luc Cassivi is an example of a servicemember who has risen significantly in ranking since the lifting of the ban.⁸⁶ When Cassivi joined the Canadian Navy in 1983, he did not speak openly about his sexual orientation; now Cassivi is "the highest-ranking sailor aboard HMCS Ville de Quebec, a commander in the Navy," and no longer feels the need to hide who he is.⁸⁷ Cassivi describes his experience as follows:

I've been openly gay for a number of years. My friends and my co-workers know it and it surely has not been an impediment for

80. Georgetown Univ. Law Ctr. Panel, *supra* note 30, Comments of Michelle Douglas at 52:46.

81. *Id.* at 53:06.

82. Stephen Bindman, *Military's No-Gay Rule Under Fire in Court*, TORONTO STAR, Oct. 27, 1992, at A21.

83. David Pugliese, *Eggleton Spitting Bullets over Gay Army Remarks*, HAMILTON SPECTATOR (Ontario), Nov. 19, 1997, at B2.

84. Questionnaire Response of Corporal Barbara Hamilton, Canadian Armed Forces, Columbia Law Sch. Sexuality & Gender Law Clinic (Mar. 17, 2010) (on file with author).

85. See Cohen, *supra* note 27 (reporting that "[i]n the last 17 years, many [openly gay men and women] have risen to the top in their respective fields").

86. *Id.*

87. *Id.*

me progressing [O]nce the rules changed, . . . so did the culture. Opportunities began to surface. These days, . . . success is dictated by performance. It's not colour, cultural background, gender or the like. It's (whether) you are competent at what you do If you're competent at what you do, then the team will take you in and fully integrate you.⁸⁸

Thus, because gay and lesbian servicemembers in the Canadian Forces no longer have to fear discovery and discharge, they can dedicate their energy to their performance.⁸⁹

Though problems still may exist for gay and lesbian servicemembers in the Canadian Forces, some of whom feel isolated and face negative reactions to their sexual orientation,⁹⁰ all reports indicate that unit cohesion and morale remain strong years after the ban was lifted.

C. Israel

Recent studies have found no negative effect on unit cohesion or morale as a result of allowing gay and lesbian military personnel to serve openly in the Israeli armed forces. Reuven Gal, the former director of the Israeli Institute for Military Studies, found that:

[homosexuals'] presence, whether openly or clandestinely, has not impaired the morale, cohesion, readiness, or security of any unit. Perhaps the best indication of this overall perspective is the relative smoothness with which the most recent June 1993 repeal of the remaining restrictions on homosexuals was received within the IDF and in Israeli society as a whole.⁹¹

Similarly, a 1999 study of seventeen soldiers in the Israeli Defense Forces ("IDF") found that only two of the seventeen reported that they would have a problem serving under a gay or lesbian commander, and only three soldiers reported being concerned about showering with gay or lesbian soldiers.⁹² One female soldier, who served from 1993 to 1996, stated that she experienced no problems as a

88. *Id.*

89. GAO REPORT, *supra* note 9, at 32.

90. See *Gay Troops Living Isolated Lives*, CALGARY SUN (Alberta), July 23, 2006, at 22 (noting that an anonymous gay servicemember sent a letter in 2006 and asserted that "[f]rom personal experience, I know there are young [gay and lesbian] soldiers who feel like they don't belong").

91. Belkin & Levitt, *supra* note 46, at 547 (quoting Reuven Gal, *Gays in the Military: Policy and Practice in the Israeli Defense Forces*, in *GAYS AND LESBIANS IN THE MILITARY* (W.J. Scott & S.C. Stanley eds., 1994)).

92. *Id.* at 545.

result of her sexual orientation.⁹³ She was amazed to discover that “people either thought that [her] sexual orientation was ‘cool’ or were indifferent to it.”⁹⁴

In fact, reports indicate that military effectiveness and morale has improved by allowing gay and lesbian servicemembers to serve openly. A recent article in *Foreign Policy* magazine by Danny Kaplan, an expert on the Israeli military, determined that allowing gay and lesbian soldiers to serve openly has actually increased military effectiveness.⁹⁵ In addition, the article concludes that policies prohibiting open service negatively affected military effectiveness and morale.⁹⁶ Prohibiting gay and lesbian soldiers from serving openly has the counterproductive effect of creating an atmosphere of paranoia and suspicion, in which “everyone becomes suspected of being gay. . . . When intimacy and sexuality—which are, like it or not, key features of masculine military culture—cannot be negotiated, cannot be told and discussed, they may be turned inwards, transformed into an urge to hunt fellow soldiers.”⁹⁷

Open service also improves morale and military effectiveness by reinforcing the fundamental importance of military service. In Israel, not serving is generally looked down upon, both because of the security risks faced by Israel and because military service in Israel is compulsory.⁹⁸ Eliav Lieblich, a former captain in the Israeli army, observes that because military service is so fundamental, the repeal of the prohibition on gay and lesbian servicemembers has served to “reinforce[] the democratic nature of the state . . . [and that] it is the responsibility of the commanders to educate their people about basic democratic principles.”⁹⁹ The repeal of restrictions on open service has thus not only had no negative effect on military effectiveness and morale, but has had the additional positive effect of reinforcing both the importance of military service and important democratic values.

D. United Kingdom

Studies conducted in 2000 show that the repeal of the prohibition against gay and lesbian people serving openly in the United

93. *Id.*

94. *Id.*; accord Susan Taylor Martin, *Will Israeli Army Success Sway U.S. Policy on Gays?*, ST. PETERSBURG TIMES (Florida), Jan. 8, 2007, at 1A.

95. Danny Kaplan, *They're Here, They're Queer, It's No Big Deal*, FOREIGN POL'Y (Feb. 3, 2010), http://www.foreignpolicy.com/articles/2010/02/03/theyre_here_theyre_queer_its_no_big_deal.

96. *Id.*

97. *Id.*

98. Belkin & Levitt, *supra* note 46, at 555.

99. Questionnaire Response of Captain Eliav Lieblich, Israel Defense Forces, Columbia Law Sch. Sexuality & Gender Law Clinic (Mar. 3, 2010) (on file with author).

Kingdom's military has had no perceived effect on morale, unit cohesion, or operational effectiveness. In 2000, six months after lifting the ban, the MOD issued an internal report about the effect of the policy change.¹⁰⁰ The report stated "that the introduction of [openly gay servicemembers into the military] has had no adverse effects on the operational effectiveness of the forces."¹⁰¹ In addition, the assessment found "that the effect on morale has been non-existent."¹⁰² In January 2010, a spokesperson for the Ministry of Defence confirmed that the repeal of the ban on gay and lesbian servicemembers in the Armed Forces has had "absolutely no impact at all on operational effectiveness."¹⁰³

In an additional sign of acceptance, in July 2009, for the first time in its history, the cover of *Soldier* magazine, the British Army's official publication, featured an openly gay servicemember.¹⁰⁴ Trooper James Wharton, clad in his dress uniform, is pictured complete with his medal for service in Iraq, next to the headline "Pride."¹⁰⁵

III. LIVING QUARTERS

This section discusses the effect that lifting the ban has had on each military's living quarters and shows that, for all countries, no changes were made in living quarters, excepting the United Kingdom's slight revision to its housing policy to recognize same-sex couples in the military.

A. Australia

Australia's military did not change its policy on housing or bathrooms and showers after its transition to open service.¹⁰⁶ Currently,

100. See Summerskill, *supra* note 52 (reporting that "MoD staff canvassed the Army, Navy and RAF in August [2000], six months after the ban was lifted" to provide a detailed report).

101. *Id.*

102. *Id.*

103. Coghlan, *supra* note 53. Additionally, the MOD report revealed that "[t]he services reported that the revised policy on homosexuality had no discernable impact, either positive or negative, on recruitment." Summerskill, *supra* note 52.

104. Terri Judd, *How the Forces Finally Learnt To Take Pride*, INDEPENDENT (U.K.), July 27, 2009, at 10.

105. See *id.* (asserting that this open display "is the most obvious sign that almost a decade after the military lifted the ban on homosexuality it is finally comfortable with its new clothes").

106. *Understanding Homosexuality Module 6: Living & Working Alongside Gay, Lesbian & Bisexual Colleagues*, AUSTL. DEFENCE FORCE, (2003), www.defence.gov.au/fr/education/Understanding%20Homosexuality%202003/index.html [hereinafter *Understanding Homosexuality Training*]; see also Questionnaire Response of Chief Petty

according to several Australian Defence Force military personnel, the rooms in barracks housing for basic training have up to four non-partitioned beds.¹⁰⁷ In all barracks and other on-base housing, toilets and showers are generally partitioned with either doors or curtains.¹⁰⁸ This has not changed in any way since the lifting of the ban in Australia. In fact, the sexual-orientation-awareness training that the Australian Department of Defence created for military personnel notes that “[t]here are and always have been homo- and bisexual personnel living, sleeping and showering with others of the same gender without anyone knowing of their orientation. Disclosure of that orientation will not result in a sudden shift from discretion to blatant flaunting. Why would it?”¹⁰⁹

B. Canada

Living quarters in the Canadian Forces have not changed since the lifting of the ban, with the result that gay and heterosexual servicemembers continue to share living quarters.¹¹⁰ Before the ban was lifted, a Canadian Charter Task Force (“CTF”) “undertook to assess ‘the probability of adverse effect’” from lifting the ban.¹¹¹ The CTF’s concern was that as Canadian Force members live and work in close proximity (for example, sharing common latrine and shower facilities), the close living quarters might invite sexual advances by gay servicemembers toward heterosexual members.¹¹² According to the report of Dr. Franklin C. Pinch, of Human Resources Consulting, the CTF studies undertaken found that “the alternative of providing four

Officer Stuart O’Brien, Australian Defence Force, Columbia Law Sch. Sexuality & Gender Law Clinic (Mar. 25, 2010) (on file with author) (indicating that “no changes were made”).

107. Questionnaire Response of Chief Petty Officer Stuart O’Brien, Australian Defence Force, Columbia Law Sch. Sexuality & Gender Law Clinic (Mar. 25, 2010) (on file with author); Questionnaire Responses of Private Nathan Howarth and Leading Aircraftsman Troy D. Jorgensen, Australian Defence Force, Columbia Law Sch. Sexuality & Gender Law Clinic (Apr. 7, 2010) (on file with author).

108. Questionnaire Response of Chief Petty Officer Stuart O’Brien, Australian Defence Force, Columbia Law Sch. Sexuality & Gender Law Clinic (Mar. 25, 2010) (on file with author); *accord* Questionnaire Responses of Chief Petty Officer Dion Chandler, Private Nathan Howarth, Leading Aircraftsman Troy D. Jorgensen, Lieutenant Phil Murphy, and Signalman Michael Purdon, Australian Defence Force, Columbia Law Sch. Sexuality & Gender Law Clinic (Apr. 7, 2010) (on file with author).

109. *Understanding Homosexuality Training*, *supra* note 106.

110. *See* Swardson, *supra* note 25 (noting that “[n]o accommodation exceptions were included in the new policy”).

111. FRANKLIN C. PINCH, U.S. ARMY RESEARCH INST. FOR THE BEHAVIORAL & SOC. SCI., PERSPECTIVES ON ORGANIZATIONAL CHANGE IN THE CANADIAN FORCES 16 (1994), *available at* <http://www.dtic.mil/cgi-bin/GetTRDoc?Location=U2&doc=GetTRDoc.pdf&AD=ADA277746>.

112. *Id.* at 18-19.

separate sets of accommodation and hygiene facilities (especially in the navy) might be possible, but not practical.”¹¹³

Notably, notwithstanding these and additional concerns about shared living quarters that were raised initially when the ban was lifted, over a decade has passed without any amendment to living quarters policies, and no reports have been found that indicate problems with the Canadian Forces’ living quarters since the lifting of the ban.¹¹⁴

C. Israel

According to interviews with Israeli servicemembers, no changes were instituted to the barracks, showers, or toilets after the repeal of the prohibition on gay and lesbian servicemembers.¹¹⁵ However, some sources report that “when a homosexual soldier lives in the barracks, commanders often give heterosexual soldiers the option to live off base if there are objections to rooming arrangements.”¹¹⁶ The same is true for “homosexual soldiers . . . [, who] have the option to live on a closed post.”¹¹⁷

Israeli military housing is segregated based on sex and differs depending on where the servicemember is located and on his or her career stage.¹¹⁸ Israel has both closed bases, where people live on the base, and open bases, where servicemembers return to their own homes at night.¹¹⁹ Thus, for many Israeli soldiers living on open bases, the amount of time living in barracks is minimal—especially during peacetime.¹²⁰

For servicemembers who live on closed bases, and thus in military housing, the living conditions vary between tents containing between five and twenty beds, barracks containing between five and seven beds, and field tents holding two soldiers.¹²¹ No walls in the

113. *Id.*

114. Swardson, *supra* note 25.

115. Questionnaire Response of Captain Eliav Lieblich, Israel Defense Forces, Columbia Law Sch. Sexuality & Gender Law Clinic (Mar. 3, 2010) (on file with author); Questionnaire Response of Anonymous Staff Sergeant, Israel Defense Forces, Columbia Law Sch. Sexuality & Gender Law Clinic (Mar. 2, 2010) (on file with author); Interview with First Sergeant Eli Kaplan-Wildman, Israel Defense Forces, in N.Y., N.Y. (Mar. 1, 2010).

116. Sherilyn A. Bunn, *Straight Talk: The Implications of Repealing “Don’t Ask, Don’t Tell” and the Rationale for Preserving Aspects of the Current Policy*, 203 MIL. L. REV. 207, 244 (2010).

117. *Id.*

118. *Id.*

119. *Id.*

120. GAO REPORT, *supra* note 9, at 43.

121. Questionnaire Response of Captain Eliav Lieblich, Israel Defense Forces, Columbia Law Sch. Sexuality & Gender Law Clinic (Mar. 3, 2010) (on file with author).

barracks separate individual soldiers' sleeping spaces.¹²² Toilets are partitioned, however, and showers are usually separated by a wall, though a common entrance is accessible by all.¹²³ Israel's open service policy did not lead to any changes in these housing conditions.

D. United Kingdom

Much of the discussion surrounding the repeal of the prohibition against gay and lesbian servicemembers concerned issues of privacy in shared accommodations and showers.¹²⁴ When the transition to open service was implemented, however, those issues quickly faded into insignificance.

Servicemembers who are not married or in civil partnerships are usually housed in Single Living Accommodation ("SLA").¹²⁵ Judging by a photograph on the website of the Ministry of Defence, it appears that individuals have considerable privacy in an SLA,¹²⁶ even while sharing common showers and bathrooms. No significant changes to this arrangement have been made following the transition to open service, and no publicly available reports indicate that the use of common showers and bathrooms by gay and heterosexual servicemembers has presented significant or systemic problems. Shared showers and bathrooms did not present a problem for couples' and families' housing because couples and families are typically allotted units that have their own bathrooms.

In 2005, the housing policy for couples was affected by the introduction of the Civil Partnerships Act of 2004, under which married quarters were renamed Service Family Accommodation.¹²⁷ Currently, "[s]ervice personnel [who] are married, in a civil partnership or who have custody of children are entitled to Service Families Accommodation."¹²⁸ In sum, at present, gay and lesbian servicemembers are entitled to the same housing facilities as their heterosexual counterparts.

122. *Id.*

123. *Id.*

124. MINISTRY OF DEFENCE, REPORT OF THE HOMOSEXUAL POLICY ASSESSMENT TEAM 120-29 (Feb. 1996) (on file with author).

125. *Infrastructure Division—The Australian Defence Force's Single Living Accommodation Project*, AUSTL. DEP'T OF DEFENCE, http://www.defence.gov.au/id/sla/project_purpose.htm (last visited Mar. 28, 2011).

126. *Photo of Single Living Accommodation*, MINISTRY OF DEFENCE, <http://www.mod.uk/DefenceInternet/MicroSite/DE/WhatWeDo/Accommodation/ProjectSlamsingleLivingAccommodationModernisation.htm> (last visited Mar. 28, 2011).

127. Judd, *supra* note 104, at 10.

128. MINISTRY OF DEFENCE SERVICE FAMILY ACCOMMODATION, REPORT BY THE COMPTROLLER AND AUDITOR GENERAL (HC 13 Session 2008-2009) (Mar. 18, 2009), available at http://www.palmcenter.org/files/active/0/Australia_Final_Report.pdf.

IV. EDUCATIONAL AND TRAINING PROGRAMS

The introduction of educational and training programs has been an important step in the transition to open service for several of the countries surveyed. Training has taken the form of general programs covering all issues of equality as well as more specialized programs targeting issues of sexual orientation discrimination. These programs are reported to have contributed in some measure to changing the attitudes of military personnel toward gay and lesbian servicemembers.

A. Australia

Throughout the nearly two decades since the ban was lifted in Australia, the Australian Defence Force, through the office of the Defence Equity Organisation, has gradually implemented training programs on sexual orientation, as well as other diversity issues, for all military personnel.¹²⁹ A few months after the ban was lifted in 1992,¹³⁰ some services within the Australian Defence Force made efforts to integrate training and education. For example, Commodore Richard R.W. Gates, a Royal Australian Navy official, recalled that Navy officials implemented a training program entitled “Good Working Relationships.”¹³¹

Currently, the Defence Equity Organisation takes responsibility for monitoring, educating, and enforcing the sexual harassment and anti-discrimination policies of the Australian military, which now include harassment or discrimination on the basis of sexual orientation.¹³² The Defence Equity Organisation reports directly to the head of personnel for the Australian Defence Force and “handles complaints regarding all matters of sexual misconduct including harassment, bullying and assault, provides an anonymous advice line for service

129. Aaron Belkin & Melissa Sheridan Embser-Herbert, *The International Experience*, in *THE U.S. MILITARY’S “DON’T ASK, DON’T TELL” POLICY: A REFERENCE HANDBOOK* 59, 69 (Melissa Sheridan Embser-Herbert ed., 2007).

After the lifting of the ban, the ADF introduced a variety of new programs and training courses to enforce and support the provisions of the Defence Instruction on Discrimination, Harassment, Sexual Offences, Fraternalisation and other Unacceptable Behavior in the Australian Defence Forces (2000). In 1997, responsibilities for monitoring, education, and enforcement of the instructions were consolidated into the new Defence Equity Organization (DEO) that reports directly to the Defence Personnel Executive (the head of personnel for the ADF).

Id.

130. BELKIN & MCNICHOL, *supra* note 60, at 2.

131. *Id.* at 20.

132. *Unacceptable Behaviour*, AUSTL. DEP’T OF DEFENCE, <http://www.defence.gov.au/fr/RR/unacceptablebehaviour.htm> (last visited Mar. 28, 2011).

members and commanders, and directs the training and outreach activities of 'Equity Advisors' throughout the forces."¹³³

Within the Australian Defence Force, all military and civilian personnel must undergo the Annual Equity Awareness Training, which covers a broad range of topics, including issues of gender, sexuality, race, and age within the military.¹³⁴ In addition, since 2003 the Australian Defence Force has had an online training program to educate servicemembers about gay and lesbian personnel.¹³⁵ The "Understanding Homosexuality" training program is not mandatory; rather, it was created so that managers and supervisors can speak with sensitivity about issues affecting gay and lesbian personnel.¹³⁶

The comprehensive training presentation first gives background information about sexual orientation and identity.¹³⁷ It then shows why harassment and discrimination against gay and lesbian servicemembers is a detriment to the military.¹³⁸ It also describes why allowing gay and lesbian personnel to disclose their sexual orientation in the military is important to unit cohesion and morale, and offers advice

133. BELKIN & MCNICHOL, *supra* note 60, at 16; *accord* Georgetown Univ. Law Ctr. Panel, *supra* note 30, Comments of Stuart O'Brien at 20:15; *e.g.*, *A Guide to Fair Leadership and Discipline in the Australian Defence Force*, DEF. EQUITY ORG., <http://www.defence.gov.au/fr/publications/guidetofairlead.pdf> (last visited Mar. 28, 2011); *Defence a Bully-Free Workplace*, DEFENCE EQUITY ORG., at <http://www.defence.gov.au/fr/publications/bullybrochure.pdf> (last visited Mar. 28, 2011); *Defence Workplace Equity and Diversity Plan: 2007-2009*, DEP'T OF DEFENCE, http://www.defence.gov.au/apscareers/careeropportunities/information_packs/documents/Combined_WEDP_20070707.pdf (last visited Mar. 28, 2011); *Guide to Equity and Diversity in Defence*, DEFENCE EQUITY ORG., <http://www.defence.gov.au/fr/publications/e&dbooklet-02.pdf> (last visited Mar. 28, 2011).

134. Questionnaire Responses of Chief Petty Officer Dion Chandler, Private Nathan Howarth, Lieutenant Phil Murphy, Chief Petty Officer Stuart O'Brien, and Signalman Michael Purdon, Australian Defence Force, Columbia Law Sch. Sexuality & Gender Law Clinic (Apr. 7, 2010) (on file with author) (discussing the various types of training programs and packages).

135. *See Alternative Resolutions and Equity: Training*, DEP'T OF DEFENCE, <http://www.defence.gov.au/fr/ARE/training.htm> (last visited Mar. 28, 2011) (noting that although the training is mandatory, servicemembers have the option of completing the training either by attending a face-to-face presentation or online); *see also* Mary K. Pratt, *Australian Military Standardizes Training with Web Tool*, CIO, Mar. 14, 2006, http://www.cio.com.au/article/43689/australian_military_standardizes-training-web-tool/ (noting that the Defence Online Campus was capable of providing uniform training to all servicemembers).

136. Questionnaire Response of Chief Petty Officer Stuart O'Brien, Australian Defence Force, Columbia Law Sch. Sexuality & Gender Law Clinic (Mar. 25, 2010) (on file with author) ("[I]t is designed to give Managers/Supervisors more inclusive terms (such as 'partner' rather than 'wife' or 'husband') and give them a little more knowledge in relation to the Gay & Lesbian Community"). Although the "Understanding Homosexuality" training program is not mandatory, servicemembers are required to complete Equity and Diversity training each year. Questionnaire Response of Lieutenant Phil Murphy, Australian Defence Force, Columbia Law Sch. Sexuality & Gender Law Clinic (Apr. 7, 2010) (on file with author).

137. *Understanding Homosexuality Training*, *supra* note 106.

138. *Id.*

for servicemembers, presumably those who are uncomfortable with open service, on how to serve alongside gay and lesbian personnel.¹³⁹

B. Canada

Education and training sessions within the Canadian military did not change significantly after the ban was lifted. Under General John de Chastelain, the Canadian Forces modified already existing harassment guidelines, started attitudinal training programs, and set up new methods of handling complaints when Canada transitioned to open service.¹⁴⁰ The training sessions did not focus solely on issues affecting gays.¹⁴¹ Instead, they were aimed at reinforcing the importance of sensitivity generally and the position that harassment will not be tolerated in any instance. Colonel Edward Nurse, commander of a Canadian Forces base, explained that, “It allows people to see that this is the military program, that it’s not just a nice thing to do. We have zero tolerance for harassment, whether it’s sexual, gender or ethnic.”¹⁴² The mandatory training sessions, however, did use words like gay and lesbian to give concrete examples to integrate the policy objectives and to aid in understanding the new policy.¹⁴³

In addition to training sessions, “[t]he National Defence Headquarters (NDHQ) issued a ‘Questions and Answers’ sheet for use within the [Canadian Forces] that explained the change in policy” through questions and answers about appropriate behavior.¹⁴⁴ The sheet addressed a range of concerns, such as:

Q31: Will such activities as dancing, hand holding, embracing between same/sex members be accepted in mess social functions?

A31: Standards of conduct for homosexual members will be the same as those for heterosexual members. Common sense and good judgment will be applied and required of all members.¹⁴⁵

Significantly, the “Questions and Answers” sheet sets out the logistics of how the shift in policy would affect the composition of the

139. *Id.*

140. Swardson, *supra* note 25.

141. *Id.*

142. *Id.*; see also Belkin & Embser-Herbert, *supra* note 129, at 65 (noting, for example, the Canadian Forces implemented “the Standards for Harassment and Racism Prevention (SHARP) program [which] strove to overturn common stereotypes about gays and lesbian[s]”).

143. Georgetown Univ. Law Ctr. Panel, *supra* note 30, Comments of Michelle Douglas at 55:11.

144. HOPKINS, *supra* note 28, at 23.

145. *Id.* (citation omitted).

military.¹⁴⁶ To the extent that soldiers were concerned that the lifting of the ban would create complications or leave servicemembers unsure of their actions, the sheet served as a reference for individuals' questions and provided clear responses using concrete examples.

In sum, Canada made slight alterations to its existing training sessions to integrate the new policy and provided guidebooks like the "Questions and Answers" sheet to clarify what the new rules would mean for soldiers on the ground.

C. Israel

While the Israeli military does provide training to address abusive treatment and harassment of certain populations, such as women, it has not provided any special education or training related to addressing harassment or abusive treatment of gay or lesbian servicemembers.¹⁴⁷ The Israeli military chose not to provide such educational or training courses because it has not found that any problems have arisen related to gay and lesbian servicemembers in the military, and thus believes the training is unnecessary.¹⁴⁸

An expert on the Israeli military has attributed the success of Israel's transition to an open military, at least in part, to the military authorities' ability to prevent "sexual orientation [from] becom[ing] a source of . . . disruption by treating it as a fact of life rather than a problem to be addressed."¹⁴⁹ The lack of special training and the implication that gay and lesbian soldiers serving openly is not an issue have resulted, overall, in the successful integration of gay and lesbian soldiers into military units.¹⁵⁰

D. United Kingdom

The Ministry of Defence developed Equality and Diversity Schemes, first introduced in 2006, to promote race, disability, sexual orientation, and gender equality.¹⁵¹ In addition, the Joint Equality

146. *Id.*

147. See Belkin & Levitt, *supra* note 46, at 547 (noting that "[t]he IDF does not conduct any special education or sensitivity training related to sexual orientation issues"); Questionnaire Response of Captain Eliav Lieblich, Israel Defense Forces, Columbia Law Sch. Sexuality & Gender Law Clinic (Mar. 3, 2010) (on file with author).

148. GAO REPORT, *supra* note 9, at 43.

149. Kaplan, *supra* note 95.

150. *Id.*

151. The Equity and Diversity Schemes have been revised and are now in force until 2011. *Equality & Diversity Schemes 2008-2011: Incorporating Armed Forces, Wider Ministry of Defence and Ministry of Defense Police*, MINISTRY OF DEFENCE, 2 [hereinafter *Equality & Diversity Schemes*], <http://www.mod.uk/NR/rdonlyres/98E4EAB6-CE02-4F39-9EF2-17DD054C5905/0/eqdivschemes20082011.pdf> (last visited Mar. 28, 2011).

and Diversity Training Centre, which is part of the U.K. Defence Academy, provides training to Equality and Diversity Advisers and their Assistants, training for senior Service personnel, and training services to individual units to meet the requirements of Commanding Officers.¹⁵² It appears that the main training provider for the staff, DB Learning, is in the process of integrating “equality and diversity issues across a range of their training products . . . [to mainstream] equality and diversity into every aspect of Defence business.”¹⁵³

According to a former servicemember, all army personnel receive training on equality and diversity issues, which includes issues faced by gay and lesbian servicemembers.¹⁵⁴ This is first carried out in recruit training.¹⁵⁵ All soldiers then receive annual awareness training as part of their annual training cycle.¹⁵⁶ This training, which is carried out by military staff in the unit who have attended the Equality and Diversity Advisers Course, generally consists of watching a film explaining the services’ policy, showing several examples of good and bad behavior, and asking the training audience to discuss what they saw.¹⁵⁷

In addition, the U.K. armed forces also use a variety of media to educate servicemembers about their policies on equality and diversity. For example, the armed forces publish the Royal Navy’s Diversity and Equality Newsletter. Where appropriate, officials in the Ministry of Defence also contribute information to articles and give interviews in the wider media. The armed forces also engage in a range of promotional, recruitment, and outreach activities, including annual sponsorship of gay pride events, youth initiatives, and building links with community associations.¹⁵⁸

V. SEXUAL HARASSMENT AND ANTI-DISCRIMINATION POLICIES

Sexual harassment of servicemembers has long been a major concern in the armed forces. In response to the shift to open service, the military branches studied here modified their existing prohibitions against sexual harassment. The revised sexual harassment policies focus on inappropriate acts instead of the sexual orientation of the persons allegedly engaging in these acts. While changes in official policy

152. *Id.* at A-14.

153. *Id.* at A-14, A-15.

154. Telephone Interview with an anonymous former servicemember, U.K. Armed Forces (Mar. 29, 2010).

155. *Id.*

156. *Id.*

157. *Id.*

158. *Equality & Diversity Schemes*, *supra* note 151, at A-16.

have been effective as a general matter, occasional incidents of harassment toward gay and lesbian military personnel remain. In response to these isolated incidents, military personnel have worked to create accessible systems of reporting and effective means of discipline.

A. Australia

Sexual harassment and discrimination policies in the Australian Defence Force played a central role in overturning the prohibition on gay and lesbian servicemembers in the military. Before the ban was lifted, the military's sexual harassment policy prohibited so-called "homosexual behaviour," making it grounds for discharge.¹⁵⁹ In the course of lifting the ban, the government changed the military's code of conduct to base discharge on "unacceptable sexual behavior," no matter whether applied to gay or heterosexual personnel.¹⁶⁰ A government statement observed that the policy "gives commanders sweeping powers and firm guidelines for disciplinary measures."¹⁶¹

Less than a year after the ban was lifted, then-Defense Department's Information Director Brigadier, Adrian D'Hage, said, "We now have a policy that's based on sexual propriety in the workplace We will still discharge homosexuals, but not because of sexual preference. It will be because of sexual harassment."¹⁶²

In the years immediately following the lifting of the ban, some isolated incidents of harassment and discrimination were reported.¹⁶³ For example, one officer's sexual orientation was presumed to be gay, although he did not reveal this himself, and "some adverse reactions ensued."¹⁶⁴ Also, "an enlisted man complained that an officer had tried to kiss him," and "[t]he officer was discharged for 'unacceptable sexual behavior.'"¹⁶⁵ During the 1993 Senate Armed Services Committee hearings on the potential repeal of the ban on gay men and lesbians in the U.S. military, U.S. Marine Corps Colonel Frederick Peck testified that Australians he spoke to said that gay and lesbian personnel would likely not come out for fear of experiencing "barracks justice" and an "inhospitable environment."¹⁶⁶

159. Smith, *supra* note 9, at 544; accord GAO REPORT, *supra* note 9, at 19.

160. Smith, *supra* note 9, at 545; GAO REPORT, *supra* note 9, at 19.

161. Branigin, *supra* note 15, at A6.

162. *Id.*

163. Smith, *supra* note 9, at 545.

164. *Id.* at 545-46.

165. Branigin, *supra* note 15, at A6.

166. Pilita Clark, *U.S. Gulf War Hero Backs Gay*, SYDNEY MORNING HERALD, May 13, 1993, at 7.

In addition, in 2000, when Aaron Belkin and Jason McNichol interviewed Dr. Katerina Agostino, professor of the Department of Sociology at Macquarie University in Sydney, she stated, “There is a senior naval officer that I know who’s very good at what he does, but he’s been unable to get promotion. . . . He was also told there’s nothing wrong with being gay, you just can’t look so gay.”¹⁶⁷ Some of the servicemembers interviewed for this report mentioned that they had experienced or observed harassment on the basis of sexual orientation as well.¹⁶⁸

Overall, however, there is very little evidence that sexual harassment or discrimination on the basis of sexual preference has been a widespread or pervasive problem in the Australian Defence Force. Immediately after the ban was lifted, senior Defence official Greg Austin noted that “[t]here have been more instances of unacceptable heterosexual than homosexual behaviour There are more men out there trying to rape women than trying to rape men.”¹⁶⁹

Moreover, as of 2000, sexual orientation-related complaints made up less than five percent of the total complaints the Australian Defence Force received related to sexual harassment, bullying, and other forms of sexual misconduct.¹⁷⁰ In addition, of the 1,400 calls received between August 1998 and September 2000 by a hotline administered by the Australian Defence Force to assist managerial personnel in handling potential misconduct, only 1.21% “related to sexual orientation” complaints.¹⁷¹

Lastly, all the servicemembers interviewed for this report who had observed or experienced harassment emphasized the accessibility of the remedial measures the Australian Defence Force makes available to military personnel.¹⁷² When faced with an incident of harassment, servicemembers have several options for redressing their grievances, including calling a Defence Equity Advisor or calling the Defence Equity hotline, reporting the harassment to superiors, contacting the Defence Gay and Lesbian Information Service for a referral, or requesting a formal inquiry into the incident.¹⁷³

167. BELKIN & MCNICHOL, *supra* note 60, at 25.

168. Questionnaire Responses of Private Nathan Howarth, Leading Aircraftsman Troy D. Jorgensen, and Signalman Michael Purdon, Australian Defence Force, Columbia Law Sch. Sexuality & Gender Law Clinic (Apr. 7, 2010) (on file with author).

169. Branigin, *supra* note 15, at A6.

170. BELKIN & MCNICHOL, *supra* note 60, at 3.

171. *Id.*

172. Questionnaire Responses of Private Nathan Howarth, Leading Aircraftsman Troy D. Jorgensen, and Signalman Michael Purdon, Australian Defence Force, Columbia Law Sch. Sexuality & Gender Law Clinic (Apr. 7, 2010) (on file with author).

173. *Id.*

B. Canada

Sexual harassment and anti-discrimination policies in the Canadian Forces did not undergo any significant changes after the lifting of the ban. However, after the ban was lifted, the Canadian Forces issued a new regulation (CFAO 19-36) entitled "Sexual Misconduct,"¹⁷⁴ which revised versions of general policy on personal relationships and harassment. This regulation "was intended to provide clear policy and guidance on what constituted inappropriate sexual behavior and conduct" by all military servicemembers.¹⁷⁵ The order applied to gay and nongay servicemembers equally, such that sexual harassment policies did not differ according to one's sexual orientation.

In addition to the new regulation, the Department of National Defence implemented a program known as Standard for Harassment and Racism Prevention ("SHARP") in 1996 to deal with all sexual harassment.¹⁷⁶ The Canadian Forces managed to integrate smoothly the SHARP regulations into the already-existing sexual harassment policy by drafting "[t]he SHARP section on sexual harassment and sexual misconduct [using] gender and orientation-neutral terms describing specific behavior that would be classified as harassment or misconduct."¹⁷⁷

The SHARP program produced many positive results.

The Canadian Forces 1998 survey on harassment found that the SHARP training program had substantially increased awareness of the harassment policy. In 1998, 97% of the [Canadian Forces] personnel surveyed stated that they were aware that the [Canadian Forces had] a harassment policy, compared to 84% of women and 80% of men in 1992. The survey further revealed that three-quarters of the respondents . . . had a harassment advisor for their unit.¹⁷⁸

In addition to the positive results of the SHARP program, statistics collected by the Canadian military in 1995 showed no correlation

174. HOPKINS, *supra* note 28, at 23.

175. Karol W.J. Wenek, Briefing Note to Director of Public Policy, Ottawa: Canadian Forces ¶ 2 (Aug. 1995).

176. CAN. DEFENCE ACAD., LEADERSHIP IN THE CANADIAN FORCES: LEADING THE INSTITUTION 109 (2007), available at <http://www.cda-acd.forces.gc.ca/cfli-ilfc/lea/doc/Leading%20the%20Institution%20-%20English.pdf>.

177. HOPKINS, *supra* note 28, at 24.

178. AARON BELKIN & JASON MCNICHOL, EFFECTS OF THE 1992 LIFTING OF RESTRICTIONS ON GAY AND LESBIAN SERVICE IN THE CANADIAN FORCES: APPRAISING THE EVIDENCE 11 (2000) (citing Major J.E. Adams-Roy, *Harassment in the Canadian Forces: Results of the 1998 Survey*, Ottawa: National Defence Headquarters (1999)).

between homosexuality and offensive conduct.¹⁷⁹ These studies led members of the “military police staff responsible for maintaining statistics on offences committed by military members” to conclude that “homosexuality has not been a contributing factor in matters of conduct and discipline.”¹⁸⁰ According to their statistics, “of the 905 assault cases for the period from November 1992 to [1995], none could be identified as involving” attacks on gay and lesbian personnel.¹⁸¹ Further, the staff responsible for administering human rights complaints filed with the Canadian Human Rights Commission reported that, “from November 1992 to [1995], only three of the 213 such complaints were based on sexual orientation, two of which pertained to differential treatment and releases which occurred *prior* to the policy change.”¹⁸² Military personnel “responsible for dealing with military grievances which come to the attention of National Defence Headquarters . . . [expressed confidence] that, of the approximately 2,000 grievances handled in the past three years, no more than about a dozen have included sexual orientation as a significant element of the grievance.”¹⁸³

Further, according to Megan MacLean, a spokeswoman for Canada’s Department of National Defence, gay and lesbian people currently serve in all three branches of the military, and since the 1992 policy change, “incidents of discrimination and harassment have been ‘extremely rare.’”¹⁸⁴ However, many gay and lesbian personnel serving in the military shortly after the ban was lifted said that “they still routinely encounter[ed] prejudice.”¹⁸⁵ According to a lesbian corporal who preferred to remain anonymous, “Because of the macho mind-set of the army, gay men must have had a more difficult time than women, especially in the field.”¹⁸⁶ Still, according to then-Chief of Defence staff, John Rogers Anderson, “there is little, if any, active resistance to the new rules.”¹⁸⁷ While Admiral Anderson agreed that “more senior officers likely opposed the change than supported it,” he believed that they “[understood] that no wavering on the policy [would] be tolerated.”¹⁸⁸ Harassment or discrimination of any kind

179. See, e.g., Wenek, *supra* note 175, ¶¶ 3-6 (finding that “behavioural and conduct data compiled by several agencies in National Defence Headquarters yield little or no evidence to suggest that allowing homosexuals to serve in the Canadian Forces has been problematic, either in terms of their behaviour or their treatment by other members”).

180. *Id.* ¶ 5a.

181. *Id.*

182. *Id.* ¶ 5c.

183. *Id.* ¶ 5d.

184. Cohen, *supra* note 27.

185. Fisher, *supra* note 29, at 14.

186. *Id.* at 14-15.

187. *Id.* at 15.

188. *Id.*

would be punished, and individuals like Master Corporal Mike Simic, who expressed disagreement at the time with gay men and lesbians being allowed to serve in the military, said his attitude was to “grin and bear it. . . . There’s a lot of the military that’s out of your hands. The policy is very clear.”¹⁸⁹

The blanket requirement that harassment would not be tolerated by or against any servicemember reinforced that the transition did not require an overhaul of the already-existing system, but involved reemphasizing already-existing obligations toward all individuals. Further, even though harassment still occurs, the fact that Canada no longer has a ban on gay and lesbian personnel serving in the military serves as a constant reminder that the Canadian Forces are committed to treating all servicemembers equally, and that harassment of any kind, including harassment of gay and lesbian soldiers, will not be tolerated.

C. Israel

The Israeli military regulates the behavior of its soldiers through prohibitions on sexual activity occurring in the barracks.¹⁹⁰ In addition, the Israeli military prohibits sexual relations between officers and their subordinates.¹⁹¹ These prohibitions drew no distinction between sexual acts of same- or different-sex couples even before the service restrictions were lifted, and thus did not need to be altered after the Israeli military opened access to all positions to gay and lesbian soldiers.¹⁹²

Since the repeal of the restrictions on gay and lesbian soldiers, there have been no significant problems of discrimination against or harassment by or of gay and lesbian soldiers.¹⁹³ A formal study of harassment complaints, undertaken at the behest of the Knesset, found that none of the cases of harassment were based on animus toward sexual orientation.¹⁹⁴ An extensive review of Israeli newspapers

189. Swardson, *supra* note 25.

190. See Clyde Haberman, *Homosexuals in Israeli Army: No Official Discrimination, but Keep it Secret*, N.Y. TIMES, Feb. 21, 1993, at 14 (noting that “[r]egulations prohibit sexual activity in general on military bases, although the rules are often ignored at least between men and women”).

191. *Id.*

192. *Id.*

193. Belkin & Levitt, *supra* note 46, at 547; see also Aaron Belkin, *Don't Ask, Don't Tell: Is the Gay Ban Based on Military Necessity?*, 33 PARAMETERS 108, 112 (2003) (reporting that “the 35 experts, soldiers, and officers we interviewed were able to recall only a handful of cases involving harassment based on sexual orientation after the lifting of the gay ban” (citation omitted)).

194. LEE WALZER, BETWEEN SODOM AND EDEN: A GAY JOURNEY THROUGH TODAY'S CHANGING ISRAEL 135 (1999).

“also uncovered no stories of soldiers who were denied promotions because of their sexual orientation.”¹⁹⁵ This was confirmed by “a board member of Israel’s primary gay rights organization,” who stated in an interview that he did not know of any “cases in which a soldier had been denied benefits, promotions, or assignments because of his or her sexual orientation.”¹⁹⁶

In addition, Brigadier-General Uri Shoham, the military’s judge advocate general, stated that he could remember only a few cases of harassment based on sexual orientation, and that such cases are “very rare.”¹⁹⁷ Further, Shoham “stated that that [sic] he had never had to deal with harassment against gay troops in his career as a military lawyer.”¹⁹⁸

In general, little evidence is available of harassment occurring on the basis of sexual orientation because individual commanders generally handle these types of claims.¹⁹⁹ However, though some evidence of harassment exists—such as a female officer’s observation that, while there was no discrimination in her unit, “[r]umors (usually from the news) do show the existence of some such problems in ‘closed units’ ([w]here one lives on base)”²⁰⁰—most of the commanders questioned in studies on the issue have reported that they could not recall any examples of harassment of gay or lesbian soldiers.

D. United Kingdom

The transition to allowing gay and lesbian servicemembers to serve in the U.K. armed forces was supported by the military’s policies against sexual harassment and discrimination. The new code of conduct that replaced the ban on gay and lesbian servicemembers in the forces was neutral as to sexual orientation, and instead forbade “touching, displays of affection and relationships across the ranks.”²⁰¹ The code was intended to “restrict sex, not sexuality,” and applied to all servicemembers equally.²⁰² Because the focus has been placed on inappropriate behavior instead of sexual orientation, sexual orientation has not become a source of antagonism as some had feared. Rather, “the forces treat sexuality as a private matter, and military

195. Belkin & Levitt, *supra* note 46, at 554.

196. *Id.*

197. *Id.* at 546.

198. *Id.*

199. *Id.*

200. *Id.* (quoting an anonymous communication, Mar. 27, 2000).

201. Jack Mathieson, *New Code to Replace Forces’ Ban on Gays*, EVENING NEWS (Edinburgh), Nov. 15, 1999, at 5.

202. *Id.*

recruits are no longer asked their sexual orientation.”²⁰³ Gay and lesbian service personnel may rely on the code of conduct for support in the event of harassment or bullying. Expressions of hostility toward gay and lesbian servicemembers are treated as grounds for disciplinary action.²⁰⁴ Further, all servicemembers know that they have recourse if they witness or experience inappropriate comments or actions.

The policies of the Ministry of Defence specifically target inappropriate behavior, rather than sexual orientation. The social conduct policy of the Ministry of Defence prescribes that soldiers, regardless of sexual orientation or sex, are prohibited from engaging in social behavior that undermines, or may potentially undermine, the trust and cohesion, and therefore the operational effectiveness, of the services.²⁰⁵ Enumerated inappropriate behavior includes:

[U]nwelcome sexual attention in the form of physical or verbal conduct, over-familiarity with the spouses . . . or partners of other Service personnel, displays of affection which might cause offence to others, behaviour which damages or puts at risk the marriage, civil partnership or personal relationships of Service personnel or civilian colleagues within the wider defence community, misuse of rank and taking advantage of subordinates, probing into a person's private life and relationships, . . . [and other types of] social misbehaviour.²⁰⁶

Deference is given to the commanding officer to determine if behavior constitutes a threat to the efficiency or operational effectiveness of the service.²⁰⁷

With respect to discrimination, cases of discrimination based on sexual orientation have been few in number. According to Lieutenant-Colonel Colin Bulleid of the British Army Equality and Diversity policy branch, expressions of “homophobia in the Army [are] now restricted to ‘the odd prat who behaves inappropriately.’”²⁰⁸

203. Tom Kelly, *Gay Sailors, the Navy Needs You*, DAILY MAIL (London), Feb. 3, 2006, at 21.

204. See Coghlan, *supra* note 53 (noting that “homophobia is treated as a ground for disciplinary action”).

205. *Armed Forces Code of Social Conduct: Policy Statement*, U.K. MINISTRY OF DEFENCE, <http://www.mod.uk/DefenceInternet/AboutDefence/WhatWeDo/Personnel/EqualityAndDiversity/ArmedForcesCodeOfSocialConductPolicyStatement.htm> (last visited Mar. 28, 2011).

206. *Id.*

207. *Id.*

208. Ben Macintyre, *Obama Is out of Step on Gays in the Military*, TIMES (London), Oct. 15, 2009, at 19.

However, the U.K. MOD has taken several steps to ensure that where there are problems, measures are in place to combat them. For instance, “[t]he Employment Equality (Sexual Orientation) Regulations [of] 2003, which came into force on [December 1, 2003], outlaw discrimination on grounds of sexual orientation in employment and vocational training.”²⁰⁹ To further the goals of the Regulations, the MOD has an entire organizational structure to protect equality and diversity.²¹⁰ In addition, soldiers can report to a number of departments or specialist officers to raise concerns about harassment.²¹¹ All Army units at the battalion level and upwards have an Equality and Diversity Adviser appointed who is normally at captain or major rank.²¹² Aggrieved servicemembers can approach the Adviser with their complaints.²¹³ Complaints can be raised through the formal complaints process as well.²¹⁴ The MOD has also appointed a Service Personnel Complaints Commissioner to ensure that complaints of bullying, harassment, or discrimination are dealt with properly.²¹⁵ The appointment of the Commissioner is another indicator of the commitment of the Ministry of Defence to ensuring equality among servicemembers. In the words of the first Service Personnel Complaints Commissioner, Dr. Susan Atkins:

The Armed Forces and MOD have signalled their commitment to having a rigorous, independent and transparent scrutiny of the complaints system. They have also understood the need for an alternative route of access for Service personnel and their families. I shall hold them to their word. I am determined to ensure that all Service men and women and their families have confidence in the complaints process and are treated properly.²¹⁶

The Royal Military Police now has Lesbian and Gay Liaison Officers appointed on all the large military bases.²¹⁷ These military police officers have attended training on gay and lesbian issues with the civilian police.²¹⁸ They, along with other military police, are

209. *Equality & Diversity Schemes*, *supra* note 151, at 27.

210. *See id.* at 20 (“The Department has adopted a unified philosophy towards equality and diversity issues at the strategic level . . . [which] is reflected through our Unified Diversity Strategy.”).

211. Interview with anonymous former servicemember, U.K. Armed Forces (Mar. 29, 2010) [hereinafter Anonymous Interview].

212. *Id.*

213. *Id.*

214. *Id.*

215. *First Ever Service Personnel Complaints Commissioner Appointed*, U.K. MINISTRY OF DEFENCE NEWS (Nov. 7, 2007), <http://www.mod.uk/DefenceInternet/DefenceNews/DefencePolicyAndBusiness/FirstEverServicePersonnelComplaintsCommissionerAppointed.htm>.

216. *Id.*

217. Anonymous Interview, *supra* note 211.

218. *Id.*

available to investigate bullying or harassment of any sort which is deemed serious enough to merit a criminal investigation, for example if an assault has taken place.²¹⁹

Other measures to ensure equality include the LGBT Forum, a departmental diversity forum, which comprises volunteers who represent the interests of LGBT staff in the Department.²²⁰ The Armed Forces also has its own website to provide information to LGBT personnel.²²¹ The site is owned and run privately, although it does now receive some MOD funding.²²²

Dave Small, a former Navy Warrant Officer who left service five years ago, observed:

Like any big organisation, at certain times you are going to come across problems. But the services certainly have strong processes in place which they are encouraging their staff to take up, if you are subjected to bullying or harassment, they want to know. The last five years has been more about letting this policy make a difference and not be just a piece of paper. That is why we have seen these big changes.²²³

VI. RELATIONSHIP RECOGNITION

This section discusses how the militaries in Australia, Canada, Israel, and the United Kingdom have recognized same-sex couples in terms of employment benefits and access to social functions. In general, all of the countries studied in this report have adopted some policies to recognize the relationships of gay and lesbian servicemembers. While all of the countries in this report have chosen to recognize same-sex relationships, they have chosen to do this in different ways, either through extending employment benefits to the servicemembers' partners, through acceptance of gay and lesbian servicemembers and their partners at military social events and ceremonies, or both.

A. Australia

In general, little information is available on how the Australian military has handled relationship recognition, other than as regards

219. *Id.*

220. *Terms of Reference*, MOD LESBIAN, GAY, BISEXUAL & TRANSGENDER (LGBT) FORUM 1 (Feb. 2005), <http://www.mod.uk/NR/rdonlyres/182123BE-3055-4ADE-902C-9678E011B7D2/0/LGBTForumTermsofReferencev2.pdf>.

221. *Networking, Supporting and Informing Britain's LGBT Armed Forces*, PROUD2SERVE.NET, <http://www.proud2serve.net> (last visited Mar. 28, 2011).

222. *FAQs about Proud2Serve*, PROUD2SERVE.NET, <http://www.proud2serve.net/faqs> (last visited Mar. 28, 2011).

223. Judd, *supra* note 104.

marriage-related benefits. In 1993, Brigadier Adrian D'Hage speculated, "No doubt we will have a first test when someone wants to bring his boyfriend to the regimental dance."²²⁴ One servicemember noted that it was somewhat of an issue: "I took my ex-partner to the work Christmas party . . . I [told] my boss beforehand that I was going to do it. And he just looked at me with a bit of a pained expression and said, 'I expect you to behave.'"²²⁵

However, another officer, Stuart O'Brien, stated that he has never had a problem with the recognition and treatment of his partner at official military events: "My partner was made most welcome at all events, dinners, formal functions, even my Admiral's wife took my partner un[der her] wing while I was working at one function. I have heard this same story told over and over by friends. So no issues at all."²²⁶

Other servicemembers report that they have shared Officer O'Brien's experience; even those who have not had the opportunity to bring a same-sex partner to a military social event do not express concern that other military personnel would react adversely, and in fact anticipate that their partners would be made to feel welcome and accepted into the military community.²²⁷ One officer mentioned that "I sincerely believe that . . . if . . . an obvious negative response . . . occur[red], this would not be tolerated in any way, shape or form."²²⁸

Australia has also recently recognized same-sex couples within the military. Although Australian federal law does not recognize same-sex couples' marriages, the relationships of same-sex couples are considered "de facto" relationships, and a servicemember in a same-sex relationship is entitled to the same benefits as married personnel.²²⁹

B. Canada

When Canada lifted its ban on gays and lesbians serving in the military, it also initiated recognition of the same-sex partnerships

224. Branigin, *supra* note 15, at A6.

225. BELKIN & MCNICHOL, *supra* note 60, at 32 (citation omitted).

226. Email from Officer Stuart O'Brien (Mar. 19, 2010) (on file with author).

227. *E.g.*, Questionnaire Responses of Chief Petty Officer Dion Chandler, Private Nathan Howarth, and Signalman Michael Purdon, Australian Defence Force, Columbia Law Sch. Sexuality & Gender Law Clinic (Apr. 7, 2010) (on file with author).

228. Questionnaire Response of Private Nathan Howarth, Australian Defence Force, Columbia Law Sch. Sexuality & Gender Law Clinic (Apr. 7, 2010) (on file with author).

229. AUSTL. DEPT OF DEFENCE, DEFENCE INSTRUCTIONS (GENERAL), INTERDEPENDENT RELATIONSHIPS (2005), available at <http://www.defence.gov.au/dpe/pac/>; Georgetown Univ. Law Ctr. Panel, *supra* note 30, Comments of Stuart O'Brien at 22:05-25:58; Questionnaire of Chief Petty Officer Stuart O'Brien, Australian Defence Force, Columbia Law Sch. Sexuality & Gender Law Clinic (Mar. 25, 2010) (on file with author).

of gay and lesbian servicemembers.²³⁰ In June 1996, the Canadian Federal Human Rights Tribunal issued an order requiring that the same medical, dental, and other benefits be provided to gay and lesbian couples as are provided to heterosexual couples.²³¹ Included among these benefits are: “compassionate leave; leave without pay for spousal accompaniment on military, foreign service, or isolated post assignments; and relocation entitlements.”²³² In addition, since June 2005, military chaplains have blessed same-sex unions and performed these ceremonies on military bases.²³³

C. *Israel*

Since the repeal of the prohibition on gay and lesbian servicemembers, the Israeli army has made some adjustments to its procedures related to relationship recognition. In particular, the Israeli army recognizes soldiers’ same-sex partners as bereaved next-of-kin in the event of the soldier’s death.²³⁴ These surviving partners are “eligible for benefits,” although they receive less compensation than spouses of soldiers generally receive.²³⁵

The Israeli army has also allowed gay and lesbian servicemembers to be accompanied by their partners at events, as any other servicemember could be accompanied by a different-sex spouse. For example, at events such as “promotions and other ceremonies,” many gay and lesbian officers will be accompanied by their partner.²³⁶ No major problems have been reported as a result of this policy. One woman, a soldier in the Israeli Defense Forces, discussed the possibility of bringing her partner to a social event on base with her commander. Her commander recommended that she not hide her sexual orientation and promised that he would support her if any problems arose as a result of her decision to bring her partner.²³⁷

D. *United Kingdom*

The U.K. military has similarly permitted gay and lesbian servicemembers to bring their partners to official events. For “‘semi-official’

230. HOPKINS, *supra* note 28, at 26.

231. *Id.*

232. *Id.* at 27.

233. Clifford Krauss, *Canada: Gay Soldiers Wed at Base*, N.Y. TIMES, June 15, 2005, at A11; Telephone Interview with Michelle Douglas speaking in her personal capacity (transcript on file with author).

234. Crary, *supra* note 11.

235. WALZER, *supra* note 194, at 138.

236. Crary, *supra* note 11.

237. WALZER, *supra* note 194, at 133.

functions,” the Ministry of Defense announced rules in 2000 that allow the President of each “Mess” dining unit to exercise discretion in allowing gay or lesbian servicemembers to attend Mess events, as he or she does for all Mess guests.²³⁸

VII. MULTINATIONAL FORCES

This section examines multinational forces in which U.S. servicemembers train and fight alongside allies from countries that allow open service. These findings provide additional concrete evidence that American soldiers have not exhibited the behavior nor shown the deterioration in productivity and cohesion that has been feared by proponents of the “Don’t Ask, Don’t Tell” policy.

A. U.N. Peacekeeping Forces

The experiences of U.N. Peacekeeping forces provide a clear picture of how American servicemembers interact with openly gay and lesbian soldiers. Importantly, no serious problems have occurred, notwithstanding the fact that “U.S. personnel assigned to UN-controlled peace operations . . . work closely with personnel from other nations,” many of which allow openly gay and lesbian service.²³⁹

Officials interviewed from the Department of Peacekeeping Operations (“DPKO”) at the U.N. in 2002 and 2003 did not know of any policy with respect to sexual orientation for personnel in U.N. peacekeeping operations, and “could not think of any instance in a mission when [sexual orientation] became an issue, whether in regard to differences in policy among the various TCCs [troop contributing countries], command and control, integration, or personnel/admin conflicts.”²⁴⁰ However, since only problems of serious magnitude warrant attention, minor issues could have arisen and been handled locally.²⁴¹ These DPKO officials also noted that “no departing Force Commander and Chief Military Observer has ever mentioned the issue in an end-assignment report, [which is] where more general observations and recommendations to DPKO are shared.”²⁴²

238. BELKIN & MCNICHOL, *supra* note 60; Judd, *supra* note 104.

239. Geoffrey Bateman & Sameera Dalvi, *Multinational Military Units and Homosexual Personnel*, UNIV. OF CAL. SANTA BARBARA: CTR. FOR THE STUDY OF SEXUAL MINORITIES IN THE MILITARY 9 (2004) (quoting Colonel Michael Dooley), available at <http://escholarship.org/uc/item/0tj9033f>.

240. *Id.* at 13 (alterations in original) (quoting Corinna Kuhl & Cedric de Coning) (quotation marks omitted).

241. *Id.*

242. *Id.* (quoting Corinna Kuhl) (quotation marks omitted).

Soldiers serving in multinational forces are regulated, for the most part, by their particular nation's regulations. However, universal standards of conduct, drafted by the U.N., apply to all peacekeeping forces.²⁴³ Peacekeepers, known as "Blue Helmets," must carry a card with them at all times enumerating the ten rules of the U.N. Code of Personal Conduct.²⁴⁴ Rule number seven demands that soldiers "[s]how military courtesy and pay appropriate compliments to all members of the mission, including other United Nations contingents regardless of their creed, gender, rank or origin."²⁴⁵ Notwithstanding the official policy of non-discrimination, Jan Koller, President of U.N. Gay Lesbian or Bisexual Employees has written that, "Internally, in spite of claims of non-discrimination, the UN does not extend any benefits such as visas, insurance, etc., . . . to same sex partners, nor does it have any policies specifically dealing with discrimination based on sexual orientation."²⁴⁶

In addition, sexual relations between consenting adults who are U.N. staff, U.N. volunteers, U.N. police, military observers, and contingents are not prohibited, provided that they do not contravene applicable (national) codes of conduct for specific categories of personnel.²⁴⁷

Further, in addition to their own domestic training, "the UN also requires [TCCs] to provide further training . . . in UN rules and policies" to their peacekeeping soldiers—"including the zero-tolerance policy" with respect to sexual harassment and abuse of local populations and training about "their additional responsibilities as representatives of the international community."²⁴⁸

Anecdotal evidence suggests that working alongside openly gay and lesbian servicemembers as part of a multinational force has not been an issue for U.S. soldiers. Petty Officer Stuart O'Brien of the Royal Australian Navy²⁴⁹ worked under a U.N. mandate with both U.S. and U.K. sailors in 1999 before the U.K. ban was lifted. He reported that his fellow sailors knew he was openly gay, and that

243. *Ten Rules: Code of Personal Conduct for Blue Helmets*, U.N. CONDUCT & DISCIPLINE UNIT, <http://cdu.unlb.org/UNStandardsOfConduct/TenRulesOfPersonalConductForBlueHelmets.aspx> (last visited Mar. 28, 2011).

244. *Id.*

245. *Id.*

246. Bateman & Dalvi, *supra* note 239, at 13 (quoting Jon Koller) (quotation marks omitted).

247. UN PEACEKEEPING PDT STANDARDS, INTRODUCTION TO CORE PRE-DEPLOYMENT TRAINING MATERIALS 6 (2009), available at <http://www.peacekeepingbestpractices.unlb.org/PBPS/Library/CPTM%20Unit%204%20Parts%201-2%20Dec%202009.pdf>.

248. Michael Fleshman, *Tough UN Line on Peacekeeper Abuses: Action Initiated to End Sexual Misdeeds in Peacekeeping Missions*, 19(1) AFR. RENEWAL 16, 19 (2005), available at <http://www.un.org/ecosocdev/geninfo/afrec/vol19no1/191peacekeep.htm>.

249. Referred to at length in the previous sections dealing with Australia's transition to open service.

“[t]here were no dramas whatsoever.”²⁵⁰ O’Brien also “repeatedly emphasized that focusing on common goals helped the sailors negotiate cultural differences” when differences arose between U.S. and Australian crewmembers.²⁵¹ Moreover, despite it being well-known that O’Brien was gay—“Australian colleagues asked about his male partner in front of U.S. service members and made other references to his sexuality”—no U.S. sailors “complained or expressed any concern about working with [him].”²⁵²

B. NATO

In general, NATO forces do not work as closely together as U.N. Peacekeeping forces. One study notes that “the two corps in which U.S. personnel serve are multinational in name only and are clearly non-integrated.”²⁵³ Personal contact between forces is limited to a small number of senior exchange officers.²⁵⁴ To the extent that troops do work together, “NATO does not set policies of any sort for its member states, but encourages standardization to promote effective military cooperation.”²⁵⁵ Standardization Groups work to mitigate the most extreme differences between member countries’ military policies.²⁵⁶

“NATO’s respect for national sovereignty requires a de facto support for [gay and lesbian servicemembers] who serve in integrated NATO missions.”²⁵⁷ Within NATO, Norway, the Netherlands, Belgium, Spain, and Canada permit same-sex couples to marry.²⁵⁸ Nine other countries—the United Kingdom, France, Germany, Slovenia, the Czech Republic, Denmark, Hungary, Iceland, and Luxembourg—allow same-sex couples to register their partnerships and enjoy many of the same rights and obligations.²⁵⁹ Portugal recognizes unregistered cohabitation, which provides limited rights.²⁶⁰ However, no Standardization Groups formally address issues of gay personnel, which can

250. Bateman & Dalvi, *supra* note 239, at 22-23.

251. *Id.* at 23.

252. *Id.*

253. *Id.* at 8.

254. See *Host Command Information*, DEFENSE.GOV, <http://ra.defense.gov/documents/irt/rofe/HostComHnts.pdf> (last visited Mar. 28, 2011) (giving information to NATO units on how to prepare for a visit from an exchange officer).

255. *Id.* at 9.

256. *Id.* at 9-10.

257. *Id.* at 12.

258. *International Survey of Legal Recognition of Same-Sex Couples*, MARRIAGELAW FOUNDATION.ORG 1, available at <http://www.marriagelawfoundation.org/publications/International.pdf> (last visited Mar. 28, 2011).

259. *Id.* at 1-2.

260. *Id.* at 2.

be taken to indicate that U.S. soldiers serving beside openly gay and lesbian forces has not been a pressing problem.

C. Coalition Forces in Iraq and Afghanistan

As part of the coalition forces in Iraq and Afghanistan, U.S. soldiers have fought for years alongside troops from twenty-two of the approximately twenty-four countries that allow gay and lesbian servicemembers to serve openly.²⁶¹ This service includes both training and combat.²⁶² General Gregory S. Newbold, a vice-president at the Potomac Institute, reported that “American and British forces ‘have trained together a great deal, so that relationship is a very easy one to carry into combat.’”²⁶³

Importantly, no one has reported that the presence of openly gay and lesbian members of other countries’ militaries has had a negative effect on the ability of U.S. troops to serve effectively.²⁶⁴ For example, referring to gay soldiers under his command, Glenn Truitt, a former submarine officer and graduate of the U.S. Naval Academy, said “[t]he homosexual men I knew in the military were much more professional about their sexuality than the heterosexuals, . . . if only because they had to be’ to gain full acceptance.”²⁶⁵ The ability of U.S. soldiers to serve alongside openly gay and lesbian servicemembers from other countries in “[t]he Iraq war demonstrates that the morale and cohesion of our forces is simply not affected by the presence of openly gay soldiers.”²⁶⁶

VIII. RECOMMENDATIONS FOR THE UNITED STATES

Drawing from the practices and policies of Australia, Canada, Israel, and the United Kingdom, the following four recommendations

261. See *Coalition Countries*, U.S. CENT. COMMAND, <http://www.centcom.mil/en/countries/coalition> (last visited Mar. 28, 2011) (listing the countries in the Coalition). There is some debate as to exactly which countries currently allow service by openly gay and lesbian people. See *Countries That Allow Military Service by Openly Gay People*, PALM CTR. (2009), <http://www.palmcenter.org/files/active/0/CountriesWithoutBan.pdf> (discussing the countries that are currently considered to be “questionable cases”).

262. Press Release, Palm Center, Researchers See No Problems When U.S. Troops Fight with Gay-Friendly British (May 14, 2003), available at http://www.palmcenter.org/press/dadt/releases/researchers_see_no_problems_when_u_s_troops_fight_with_gay_friendly_british_zero_impact_seen_on_combat_capab [hereinafter Palm Center Press Release].

263. *Id.*

264. Stacey L. Sobel, *The Mythology of a Human Rights Leader: How the United States Has Failed Sexual Minorities at Home and Abroad*, 21 HARV. HUM. RTS. J. 197, 204 (2008).

265. Palm Center Press Release, *supra* note 262.

266. *Id.* (quotation marks omitted) (statement by former U.S. Rep. Martin Meehan, a Massachusetts Democrat and, at the time, a senior member of the House Armed Services Committee).

are aimed to facilitate a smooth transition to open service in the United States:

A. Educational and Training Programs

Programs on equality education and training proved vital to most of the countries in a successful transition to open service and would likely do so in the United States. Training programs that address sexual orientation could form part of general equality training programs that already target gender, race, religion, and age discrimination. These programs should be made mandatory for all service personnel to address clearly and comprehensively the need for fair treatment throughout the armed forces, regardless of servicemembers' sexual orientation. In addition to this general programming, a more specialized educational program on sexual orientation discrimination and the issues faced by gay and lesbian service personnel could be administered to managerial and supervisory personnel.

B. Anti-Discrimination Policies

The successful integration of gay and lesbian servicemembers into the U.S. armed forces will depend in part on how secure these servicemembers feel in the performance of their duties vis-à-vis other servicemembers. Anti-discrimination policies are essential to ensure that gay and lesbian servicemembers are treated equally. All service personnel, irrespective of their sexual orientation, should have access to a complaints mechanism when a breach of the anti-discrimination policy occurs. In addition, to ensure that the anti-discrimination policy is implemented on the ground, army units at the battalion level upwards should have an Equality Adviser. The Equality Adviser would be the first point of contact for a discrimination complaint.

C. Sexual Harassment Policies

The armed forces already have policies against inappropriate conduct, including sexual harassment. As long as these policies apply equally to all members without regard to sexual orientation, they do not require revision. If they refer to the sexual orientation of parties, these policies should be revised to focus on the inappropriate act, rather than on the sexual orientation of the party committing the act.

D. Gay Pride Activities

Since the armed forces have traditionally excluded gay and lesbian servicemembers, there may be cultural barriers in the forces impeding integration of these servicemembers. By taking measures such as supporting gay pride events, encouraging lesbian and gay affinity groups within the military, and engaging with the media in welcoming gay and lesbian servicemembers, the armed forces can facilitate this integration.

CONCLUSION

The overwhelming weight of our evidence points in one direction. Even though some concerns existed over allowing gay and lesbian soldiers to serve openly in the countries reviewed here, these concerns were, and continue to be effectively addressed. Through meaningful education and training programs, strong anti-discrimination policies, and clear reporting measures, the fears espoused by those opposed to lifting the ban, including, for example, loss of unit cohesion or military readiness, never came to pass. Not only were these fears unfounded, but even more compellingly, the experiences of our allies also show that allowing open service has increased the morale and military performance of those gay and lesbian servicemembers previously forced to hide their sexual orientation and has likewise enhanced the performance of their military friends and colleagues.