

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S DEPARTMENT

Sub Program 1.2.4

Question No. 70

Senator Abetz asked the following question at the hearing on 19 October 2009:

I asked the question 'When do you say that Australia asserted its sovereignty over that area over those two reefs or islands?' The reply – 'it is States that assert sovereignty and not organisations such as Ure-Chan. The second issue is that I can tell you when those islands were made part of the Coral Sea Islands Territory: I think that was in 1989. I would have to check on this, but I believe they may have been made part of a nature reserve prior to that' – indicated that Ure-Chan were attempting to assert sovereign rights as the basis for their claim over Middleton and Elizabeth Islands. I am advised that, under international law, a private party such as the Ure-Chan Group can establish proprietary rights to either terra nullius or res nullius, meaning no mans land or thing, through effective occupation (not by asserting sovereignty), which the Ure Chan group did in 1970. This is of course well prior to 1989 which was the date given when Australia first asserted sovereignty over the area. Moreover, I understand that Australia is a party to the Spitsberg Treaty of 1920 and a well recognised principle of international law under that treaty is that pre-acquired property rights must be recognised by any subsequent sovereignty claimant. As I understand it has always been Ure-Chan's stated intent to use its rights to assist Australia perfect its own later sovereign claim. Could you please explain your reference to 'It is states that assert sovereignty and not organisations such as Ure-Chan?'

The answer to the honourable senator's question is as follows:

A coastal State's entitlement to a maritime zone, including an extended continental shelf, stems from its sovereignty over land. Under international law, private organisations such as the Ure-Chan Group or individuals are incapable of exercising sovereignty over land and thus have no entitlement to exercise sovereignty or sovereign rights over any maritime zone. This is the province of sovereign States. Also, the Department does not agree with a number of premises in the question. In particular, it does not agree that Australia first asserted sovereignty over Elizabeth and Middleton Reefs in 1989. Also, it does not agree that the Ure-Chan Group established proprietary rights in Elizabeth and Middleton Reefs.