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**Quadrilateral Security Dialogue in the Asia
Pacific Region and its adaptation to
maritime security issues in the Arctic
Region; Part III**

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Executive Summary

Competing claims to jurisdiction and sovereign interests in the Arctic raise complex legal questions concerning the law of the sea. They include e.g., freedom of navigation in waters whose navigable surface alters with effects of climate change, delimitation of continental shelves beyond 200 NM and exclusive economic zones, and the nature of right of innocent passage through territorial waters. The right to self-defence through national sea, land and air measures may exceed real capacity to effect such defence, thus invoking defence treaty regimes. Complexity compounds as competing states hold different interpretations of treaty law and customary norms. This paper briefly ‘christens the ground, sea and seabed’ in legal terms before its successor papers address specific issues.

1. Introduction

This note is the third in a series that diagnoses conditions for success in implementing means to settle international maritime disputes. These means include models of multilateral diplomatic practice and provisions of international law. The latter will necessarily test the modalities of interpreting inter alia the Charter of the United Nations (UN Charter) concerning the threat or use of force¹ in dispute settlement, the United Nations Convention on the Law of the Sea (UNCLOS) delimiting e.g., a state’s territorial seas,² and select bi-and multilateral security treaties.

The series of notes informs those who are concerned with designing and implementing policy, invoking international law, planning multinational defence and security measures, and deploying technology and capital equipment, all as concern a state’s asserting its claims to sovereignty and related jurisdiction over maritime areas.

Part I of the series canvassed earlier models of Quadrilateral dialogues and regimes in trade and in security before setting on an assessment of Quad 1.0 [2007-2008] concerning the Asia Pacific region. Part II extended the research by assessing the comparatively robust Quad II, stood up in 2017 and still [2021] extant, and its potential for success in that region. Parts I and II serve as background to Part III and its successor parts.

Part III and successors analyze if and how diplomatic and legal practice can be effective in settling another maritime dispute. They switch the focus of research from the Asia Pacific region to the Arctic. Part III starts the debate by overviewing the geographic and maritime features of the Arctic region and thereby providing the physical framework for legal analysis.

Part IV and future notes will overview UNCLOS’ provisions that determine states’ territorial seas, continental shelves and exclusive economic zones. Further, Part IV et al will introduce the geo-legal issue put before the UN Commission on the Limits of the Continental Shelf (CLCS),³ a body of experts under the UN Secretariat’s Office of Legal Affairs and its Division for Ocean Affairs and Law of the Sea.⁴ Specifically, Canada, Denmark and Russia have submitted to the CLCS their competing claims to the *Lomonosov Ridge*. The ridge is one of several geographic features of the

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Arctic Ocean's seabed that critically connects these states' respective continental shelves and thereby extends their outer limits. Delineating outer limits of continental shelves is the task of the CLCS.

2. 'Sea truth;' overview of geographic and maritime features of the Arctic Ocean

2.1 Coastal and other states

Seven littoral states possess what UNCLOS cites as "opposite or adjacent coast lines."⁵ Four states are asserting competing claims to a part of the Arctic, viz., Canada, The Russian Federation, the United States, and the autonomous region of Greenland per Denmark. Norway is asserting a small competing claim against Russia. The People's Republic of China, is cited as a 'near Arctic state.'⁶

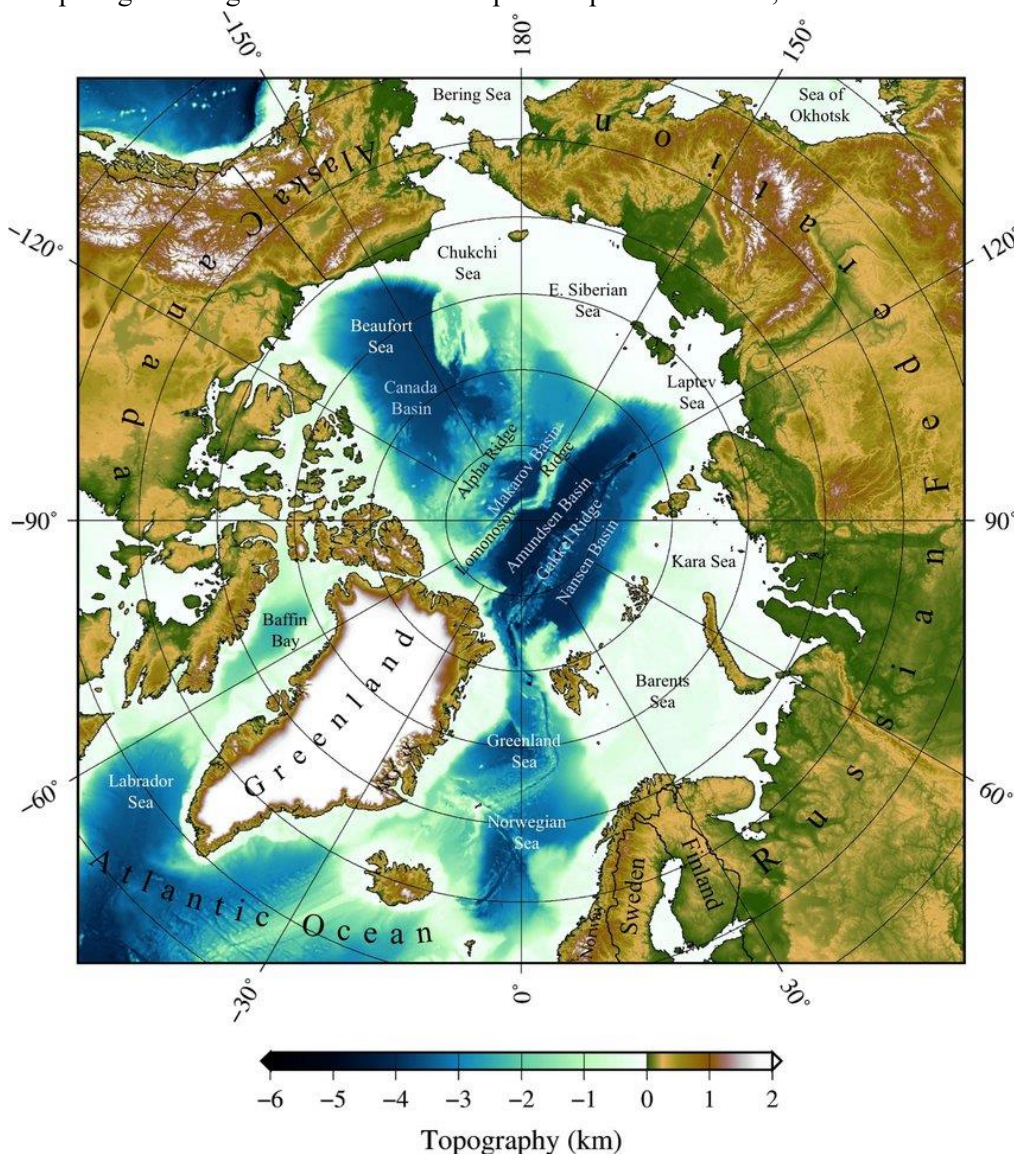


Figure 1: A topographic map of the Arctic Ocean basin and its peripheral seas.⁷

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Figure 1 identifies opposite and adjacent coastlines, which are international statutory features that inform Arctic sovereignty. They serve to delimit states' territorial seas, exclusive economic zones and continental shelves that extend from shorelines. These features frame national strategies, policies and programs concerning territorial security, economic wealth, intellectual scientific property and environmental impacts. Determining them may invoke competing modalities of legal interpretation.

2.2 Geographic subsea features

The Arctic seabed basin contains geographic seabed features.

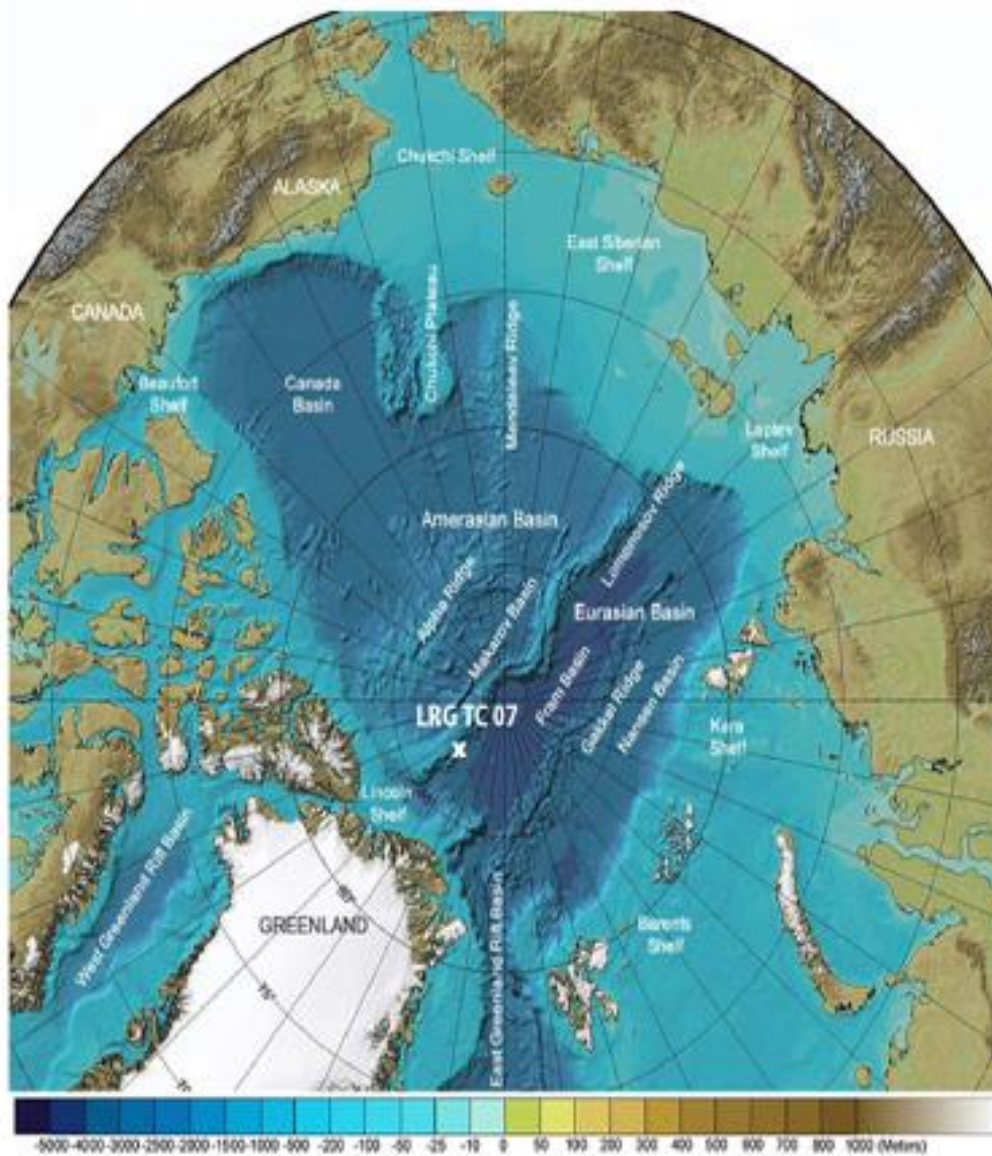


Figure 2: Lomonosov Ridge and other features, central Arctic Ocean.⁸

Figure 2 situates the Lomonosov Ridge relative to continental shelves of competing claimant states.

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2.3 Transit routes relative to geographic features and coastlines

Given these extant coastlines and seabed features, **Figure 3** shows emergent transit routes through the Arctic region, assuming that climate change will continue to destroy some or all polar ice packs.



Figure 3: Polar Shipping Routes⁹

While politico-military analyses address future land, sea and air threats to vital national interests, transportation economists authoring Figure 3 offer reserved prognoses of future commercial activity.

The Northern Sea Route (NSR) along the arctic coast of Russia is likely to be free of ice first and thus represents the highest commercial potential, reducing a maritime journey between

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East Asia and Western Europe from 21,000 km via the Suez Canal to 12,800 km, cutting transit time by 10-15 days. During the Soviet Era, the NSR was used to resupply military and resource extraction along the Soviet Arctic... In 2009, two German ships, *Beluga Fraternity* and *Beluga Foresight*, completed with a Russian icebreaker escort the first commercial journey across the Northern Sea Route (or Northeast Passage) linking Busan to Rotterdam.... Other shipping lines have also run trials, but these trials did not show much commercial potential.

The Northwest Passage (NWP) crossing Canada's Arctic Ocean could become usable regularly by 2020...The maritime journey between East Asia and Western Europe would take about 13,600 km vice 24,000 km using the Panama Canal. In 2007 the Northwest Passage was open during summer months for the first time in recorded history, but stability is problematic.

The Transpolar Sea Route (TSR) uses central parts of the Arctic to link the Strait of Bering and the Atlantic Ocean of Murmansk. This assumes ice-free conditions not yet observed.

The Arctic Bridge linking the Russian port of Murmansk or the Norwegian port of Narvik to the Canadian port of Churchill could be used, mostly for the grain trade. Although this is not a trans-Arctic route per se, it is designed to connect two hinterlands (Northwest Europe and the North American Midwest) through the Arctic.

However, consideration of arctic routes for commercial navigation remains speculative.

1. It is uncertain to what extent the receding perennial ice cover is a confirmed trend or simply part of a long-term climatic cycle [and] difficult to predict annual variations in the ice cover, underlining unstable navigation conditions. Even if the Arctic routes[were open during summer, they would remain closed to commercial navigation during winter unless dramatic shifts in weather patterns emerge. As of 2010, ice-free conditions of most Arctic shipping routes lasted about 30 days. Uncertainty of seasonal shipping windows make planning of voyages uncertain. As maritime shipping companies look for regular and consistent services, this seasonality has limited commercial appeal.
2. Limited economic activity exists around the Arctic Circle. Hence, shipping services crossing the Arctic have little opportunity to drop and pick-up cargo while passing through. Unlike long-distance commercial shipping routes, limited revenue generation potential for shipping lines along the Arctic route obviates the emergence of transshipment hubs. Shipping in the arctic is suitable for point-to-point services linking directly a source port and a destination port. This value proposition could improve if resources (oil and mining) around the Arctic are extracted in greater quantities, which would favor bulk shipping. This would mostly take place along the Siberian coast.
3. The Arctic remains a frontier in terms of weather forecast, charting, and building a navigation system, implying uncertainties and unreliability for navigation. Climatic

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change may impose additional risks to navigation around the arctic. The decrease in sea ice extent and its smaller volume are linked with the growing mobility of summer sea ice as well as more coastal erosion. Substantial efforts must be made to ensure that navigation can take place in a safe manner along well-defined and patrolled navigation routes. The bathymetry in the Arctic is usually shallow, which is limiting the size of the ships that could be operated in these waters. Ships also need to be certified to operate in arctic conditions, which increases costs and undermines the economic benefits of the route. Circulation requires to take place as a convoy spearheaded by an ice breaker, which is subject to additional costs. Insurance rates are also much higher to take care of the involved risks, which are not clear to assess.

The setting of rail corridors between China and Europe across Central Asia (the Eurasian land bridge, also known as the One Belt One Road initiative, offers an option that is more stable and time performing than the Arctic routes.¹⁰

In sum, the commercial advantages of Arctic shipping routes are problematic, although changes to bunker fuel prices and steaming practices may incentivize niche services use of the Arctic as a shortcut between major northern hemisphere markets.¹¹

To complete the geographic survey, **Figure 4** situates the Lomonosov Ridge amid select transit routes.

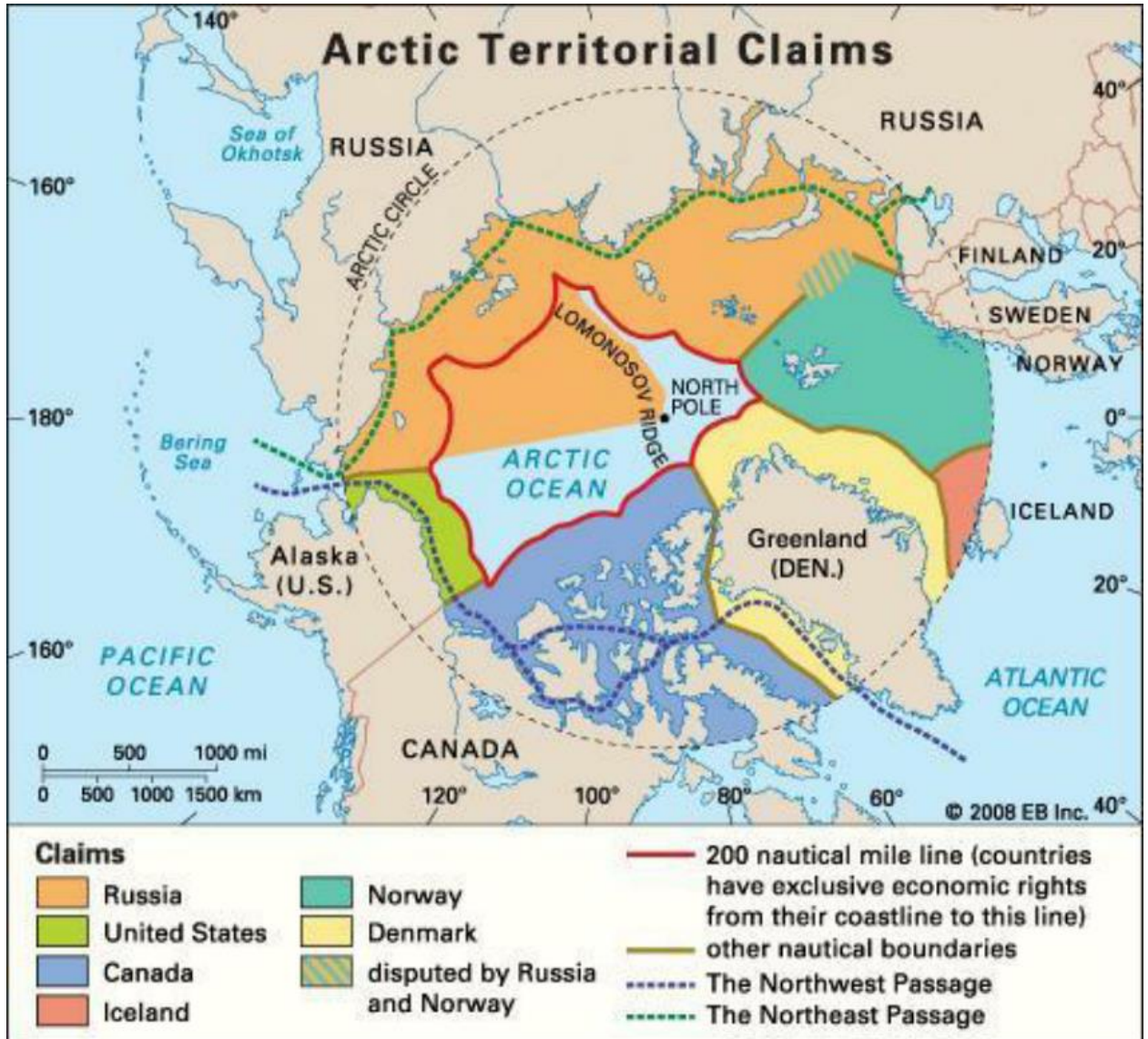


Figure 4: Lomonosov Ridge, donut hole, and national exclusive economic zones.¹²

3. Conclusions

1. Settlement of international disputes rests on diplomatic practice and interpretation of law.
2. One of the preliminary outstanding issues in the general debate on competing claims to sovereignty in the Arctic region is the need for a clearer definition and formalization of what these claims specify and do not specify. To date, competing claims have been formalized and put before an adjudicating body in those submitted to the CLCS concerning the Lomonosov Ridge. Otherwise, claims are being limited to conjectured analysis and contingency planning conducted by well-informed experts.

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3. The US has not yet ratified or acceded to UNCLOS, and hence cannot yet file a claim with CLCS. Yet, the US considers UNCLOS as a treaty that is declaratory of customary law. The US initially opposed the UNCLOS-formulated 12 NM territorial sea limit¹³ but has subsequently concurred except in issues concerning straits and other international passages. "...[T]he US ...does not recognize [UNCLOS (1982) provisions] of coastal states to regulate passage or limit activities in such waterways. ...[The] US regard [unhindered transit] ...as [custom] for ...states [sailing] ...through ...international straits."¹⁴ As such, prior to settlement of any substantive disputes arising between the US and another state, the legal standing of customary law may have to be settled as a preliminary matter, a separate debate on which China has strongly held opinions.

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Endnotes

¹ Charter of the United Nations (1 UNTS XVI concluded 26 June 1945 in force 24 October 1945) Arts 2(4), 51 <https://www.un.org/en/about-us/un-charter>.

² United Nations Convention on the Law of the Sea (1833 UNTS 397 concluded 10 December 1982 in force 01 November 1994) Art 15 https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf.

³ Iuchi Yumiko and Usui Asano, *The Functions and Work of the Commission on the Limits of the Continental Shelf How It Responds to Disputed Island Claims Among Coastal States*, (Review of Island Studies 19 September 2013) <https://www.spf.org/islandstudies/transfer/readings/docs/b00005r.pdf>; see also https://www.un.org/depts/los/clcs_new/clcs_home.htm.

⁴ See <https://www.unep.org/explore-topics/oceans-seas/what-we-do/working-regional-seas/partners/un-division-ocean-affairs-and>.

⁵ Supra n 2 Arts 15, 74, 83 https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf.

⁶ See Sanna Kopra, *China and its Arctic Trajectories: The Arctic Institute's China Series 2020*, Arctic Council Centre for Circumpolar Security Studies 17 March 2020) <https://www.thearcticinstitute.org/china-arctic-trajectories-the-arctic-institute-china-series-2020/>.

⁷ Thomas W K Armitage, *Studies of the Arctic Ocean from satellite radar altimetry*, 22 (Doctoral dissertation University College London 2018) https://www.researchgate.net/publication/325528231_Studies_of_the_Arctic_Ocean_from_satellite_radar_altimetry/download.

⁸ César Fuentes Guerrero, *Grain size analysis of a short sediment core from the Lomonosov Ridge, central Arctic Ocean* (Stockholms universitet, Institutionen för geologiska vetenskaper 2015).

⁹ The Geography of Transport Systems; The Spatial Organization of Transport and Mobility (undated) <https://transportgeography.org/contents/chapter1/transportation-and-space/polar-shipping-routes/>.

¹⁰ Ibid.

¹¹ Ibid.

¹² Craig L Fleener, *U.S. Arctic Policy, A Race for the Arctic Intelligence and National Security Implications* (May 2013) https://www.researchgate.net/publication/259694535_US_Arctic_Policy_A_Race_for_the_Arctic_Intelligence_and_National_Security_Implications/download.

¹³ Supra n 2 Art 3.

¹⁴ Farzin Nadimi *Clarifying Freedom of Navigation in the Gulf*, The Washington Institute Policy Watch 1354 (24 July 2019) <https://www.washingtoninstitute.org/policy-analysis/view/clarifying-freedom-of-navigation-in-the-gulf>. accessed 06 October 2019.