

Arun Dohle and Naomi Willemsen – interview Jaap Doek.

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AD: You printed out our website.

JD: Yes of course

AD: Which one

JD: Well, I have two. The other one is 'Trafficking'. This one is 'Adoptee Rights Council'. Where is that Council located? In your house?

AD: No, we are registered in India.

JD: Ok. Tell me, what you are after. What do you want?

AD: I want to know, she [Naomi] also wrote her thesis about adoption, and I work(ed) with Roelie for a long time, and I have been wondering all the time about the subsidiarity principle. I started with searching, for my own roots. And then I discovered that there is a lot of trafficking. And we exposed it in NL, kidnapped children. Then I met Roelie, and what I had never understood is why it happens. And Roelie explained me the difference between the Hague Convention and the UNCRC. Since then I understand what is going on in the field. We are still wondering about why there is a Hague Convention and why there is such a difference.

JD: Well, the difference is perhaps the Hague Convention, and intercountry adoption, it has been specifically drafted for this purpose. So in the area of adoption, the Hague Convention is very complete and detailed. The Convention is not on adoption. It has an article, 21, on adoptions. It was a matter of discussion during the drafting process, because the first text was suggesting that all countries that would ratify the Convention, had to introduce adoption. Which was impossible for Islamic countries, so ultimately the text is roughly speaking that if you have intercountry, or if you have adoption, you have to apply the following rules. Which are rather general, and it is also clear that the Convention wants to put domestic adoption first and look at intercountry adoption as a matter of last resort. Not that explicitly, but in the order of the article, and now it is presented it's clear that countries that have ratified the Convention should first try to do domestic adoption if there is legal ground for adoption. That is the other issue. That the Committee during the Convention process specifically dealt with in that regard, but there is a remarkable element in article 21, the best interest of the child, which is a primary consideration in article 3 of the Convention. There is one exception that is adoption has to be in THE best interest. The best interest shall be the primary consideration, so that goes above.

AD: paramount

JD: Yes. It is not A primary consideration, but is THE primary consideration, which means that the best interest of the child goes above all other interests. So that is an explanation of the difference between the Convention on the Rights of the Child and the Hague Convention.

In terms of what countries are bound by, all countries except the United States, have ratified the Convention, so they are all bound by the Convention and in that broader context also article 21.

AD: and article 21b

JD: Yes, countries that have adoptions should follow the rules in article 21. But it doesn't talk about the whole organisational business of both domestic and intercountry adoption. So you don't find in the Convention the rules which you will find in the Hague Convention on the Central Authority, the country that is receiving the child and the country that is sending the child. So, and not all countries in the world are party to the Hague Convention. So, there is that other issue. But in terms of what your Adoptee Rights Council wants, what is your policy, what is your strategy, what are your goals?

AD: We basically base our policy on the UN Convention, also on the original subsidiarity principle, which includes foster care and residential care, all forms of care. But what I am more interested in is, as I was not there, I don't understand how this Hague Convention came to be. I have been reading about it and, as far as I know, you and Nigel Cantwell were - DCI was quite involved in the drafting process, in the initial drafting process, so if I got it rights, DCI got some money from the [Dutch] Ministry of Foreign Affairs. Initially that was the first funding DCI got, to help with the drafting of the Hague Convention. Is that correct?

JD: Yes

AD: How, from my view you sit at the UN level and draft a UN Convention which is quite good, then why go to a private law Convention.

JD: Well, the simple answer is that the Convention was not as specific as it should be according to the people working in the field of adoption. There were a number of cases that showed that there were all kind of illegal practices going beyond any control of the governments or other institutions like child protection.

AD: Like for example?

JD: Well, the very famous case that came to light and that I was aware of, and got information about, was children adopted in Brazil. I was the Juvenile Court judge in the city of Alkmaar: Well, the simple answer is that the Convention was not as specific as it should be according to the people working in the field of adoption. There were a number of cases that showed that there were all kind of illegal practices going beyond any control of the governments or other institutions like child protection.

AD: Like for example?

JD: Well, the very famous case that came to light and that I was aware of, and got information about, was children adopted in Brazil. I was the Juvenile Court judge in the city of Alkmaar at that time, and there were rumours, and later confirmed, that quite a number of people - heterosexual couples - homosexual was not an issue at that time, I am talking about 1975/1976. There were couples that went to Brazil and came back with child, with a birth certificate that showed that that couple were the parents of that child. So that child was born to the woman of the couple. The simple thing they had to do is register the birth certificate in the Netherlands. Then something went wrong. Because it was the Northern part of the Province North-Holland, so around Alkmaar and above, and in a small village - they were sending the birth certificate and asking for registration. The man who was dealing with it knew, because some things are known without explicit information, but he knew that that woman could not have a child. So, he was wondering how she could have a child in Brazil. Was there something special in Brazil? For women who could not conceive a child? So, he started to further ask around and found out that there were more cases similar to this one. That he heard from his colleagues in the birth registration arena. So it was brought to the notice of the Public Prosecutor. Because it is an illegal, and also an offence... so those parents, the Prosecutor then fined - I don't know the amount any more - and the child was taken away from them. It was placed, by the guardianship organisation, with the

couple who brought the child here. Because the argument was: The child has been raised by this couple for the last two years, so it is in the best interest of the child to continue to be raised by that couple. Because the child does not know anything about what has happened in Brazil. And it is in the interest of the child to be raised by the same couple. So, the short conclusion was: it makes sense to break the law. Because at the end, you have what you want.

AD: You get a child

JD: So one of those examples was used, and I think there were others from India as well. They said, we have to have more control over adoption practices. Particularly in the countries of origin. So the whole system was created on paper that there was a real check on the couple who wanted to adopt a child, under the Central Authority in the country that was going to receive the child, and then also the Central Authority in the sending country should fully control the transfer of the child to that couple and make sure that all the required consents were provided.

I think it works, I don't have research that confirms it, but I think that in the majority of cases this system works. There are still cases in which the adopting parents go around the system. And have a direct link with an orphanage in India, an orphanage in Colombia, an orphanage in Cambodia. Or in China. China, and I talked to the Chinese authority, they said that there was a strict control and one of the things that they said was that an institutions was not going to accept any particular large gift from the couple. And that number of children that could be adopted from China was limited.

AD: When did you speak to them, the last time?

JD: Ten years ago. And the Chinese were very kind of keen on trying to stop a large output of children from China into the adoption practices. So they limited the number, and they also set conditions in terms of only children with certain disability, whether mental or physical. So, but that is all about intercountry adoption. There are two main kind of...

AD: The Brazilian case you mention is the case which now triggered the investigation of the Joustra Commission.

JD: Yes.

AD: That is going to be quite interesting. But how? I watched for example the video of Hans van Loon, where he explains how the Hague Convention came to be.

JD: Yes, he wrote that report. That was as a set-up to the Convention.

AD: But how did it really happen. In reality. I can read it all in law review articles, but how did it happen. How did you get to The Hague? To the Private Conference.

JD: Well, by that time I think, I don't know, they were working on the Convention on the Rights of the Child. I was not involved in the Convention on Intercountry Adoption. But I think there are for many of those questions there are no answers in terms of a well thought out strategy in terms of how we are going to address intercountry adoption. That there was an extensive discussion between different parties, whether there was an intercountry adoption Hague Convention. The international civil law centre in The Hague is a centre that works on all kinds of conventions. On cross-country civil law issues. There was a lot in the area of business, but this particular point - and I don't know whether there was any person personally kind of involved in trying to get this done, whether it was just a matter of opportunity. The Hague international institute where Van Loon was the Secretary General was looking for opportunities to develop rules for international private law business.

AD: But did they have any relation to adoption, or he himself adopted?

JD: Van Loon? No. Not that I am aware of.

JD: But it was seen most likely, that's an explanation, it was seen as an opportunity for the Hague Institute to develop a Convention that was in the area of family law. Not on business, or contracts or whatever. But in family law. And given the rumours on illegal practices in intercountry adoption there was another consideration that may have played a role. That we should address those illegal practices on intercountry adoption and set the rules. That is, Lowe, I think he was a professor in the UK and I think he was in Scotland but I am not sure. But Nigel Lowe was a very important player in the field of setting the rules. He has done a lot of research on the implementation. So, but there is most likely no other explanation than a coincidence of some considerations and ideas, and part of it is, I think, opportunist in terms of the opportunity to do something in the area of intercountry adoption to set rules. And the Hague Institute is, well, not considered by the whole world as the only body that could do it. But it was certainly for Van Loon an excellent idea and opportunity to profile his institute. That is always part of these kind of things. So, that is, and he has been very successful. Because that now is also applied to the Abduction Convention of the Hague. So, setting rules for that apparently works, but still we do have cases. Not forty years ago, but today, where parents or a couple - whether it is homosexual or heterosexual - succeed in going around all the procedures that were set up by the Hague Convention. And have direct access to orphanages and get a child.

AD: What we have been doing - Against Child Trafficking - is building up upon the Romanian experience, and that is essentially the first country where that Convention was implemented. What I found in India, you said in India is like the 1984 the Supreme Court regulated intercountry adoptions quite well, so apart from the black-market adoptions - which is another topic - it is quite well regulated. But we found corruption within the Central Authority. We found orphanages like Preet Mandir kidnapping children, Malaysian Social Services. There are huge amounts of money involved. Within the legal framework we found trafficking and criminal practices. We brought them to Court and still fighting those cases.

The point is like during Romania's accession to the EU, the European Commission went in and said: no Hague anymore, we apply strictly article 21b.

JD: Yes

AD: In the end they set up the Independent Panel, which you may remember. The Independent Panel essentially said adoption is no child protection manner under family law. It is private law. And the Independent Panel also clarified the subsidiarity principle, so that all local care comes before intercountry adoption. So these are the two important points. The question is then, when you were Chairperson of the UN Committee on the Right of the Child, you advised Romania again to implement the Hague Convention and also other countries.

JD: Yes.

AD: So the Hague system, which is actually contra dictionary to the UNCRC, and then you came up with the Guidelines. And I see now the Guidelines being implemented in India. We work a lot in the field. We do a lot of freedom for information requests. We collect a lot of information. We follow the system from inside within government sources. The system in India is horrifying. Just to give you a number, last year there were 2000 children in the pool. And today, as we speak, 8.677. It is a question of rules and procedures, because when the child is free for adoption within two months the judge has to agree, if a Petition is filed. Nobody checks any more.

JD: Why not? Why don't the Indian authorities do not check?

AD: Well, because there are clear rules and procedure, authorities check at the level of the child welfare committees. But the Child Welfare Committees are of course linked to the adoption agencies. And every child in residential care in India, mostly we have residential care, and we cannot do away with all residential care, so with the Guidelines you brought in the De-institutionalisation, but with adoption as a child protection measure.

So, what I see in India is the result of the Guidelines. And also the organisations in India, the NGO's, follow the Guidelines.

JD: Yes, but the Guidelines intentionally do not pay attention to adoption. They have explained why adoption is left out of the Guidelines. I had nothing to do with that. I don't agree with that.

AD: Who had to do with that?

JD: Well it has to do with State parties. It was not even adopted by the General Assembly. The General Assembly welcomed it. And recommended all countries to follow the guidelines. The Guidelines is on alternative care. And the interesting part is that as soon as the child is adopted and authorised and confirmed by a Court Decision, like in the Netherlands or in any other country, then that child is not supposed to be in alternative care. But the child of that couple. That is the reason.

And in addition I think that the whole issue of intercountry adoption as part of the Guidelines would have kind of made the adoption and the acceptance of the Guidelines a very difficult issue. There were countries involved, Brazil was one of them. There were some other countries. Leading. Because it was not a CRC Committee. It was the Brazilians and some others, and they were very active and some other countries were active. They ultimately agreed on a text for the Guidelines between the Latin-Americans and the Europeans, so leading countries were in agreement on the text, and the agreement was also not to deal with adoption. So. It is out. And that is a missed opportunity in my view, on the basis of the experiences so far, do tell something about what is necessary to make, to prevent, all forms of illegal intercountry and domestic adoption. Because the idea that only intercountry adoption are sometimes illegal, also domestic adoptions are...

AD: That is exactly what you have in India. As the Central Authority makes advertisements in the cinema. They advocate for adoption, promoting it like toothpaste, like chicken, like marketing. And then they don't have enough children, so the parents go to a clinic and buy a child. And register the birth certificate or make an adoption deed, because under HAMA you can do that.

JD: But they are addressing that, the Indian people.

AD: No. Yes, in the cinema. They promote adoption. Like mad.

JD: Yes, they tell the Indian people to adopt a child. Because otherwise the child is left in an institution.

AD: Correct. But then there are not enough children. So then these parents go to buy children. That is the linkage between the so-called legal adoption system and the illegal adoption system. And then when it comes out, you have the same thing what you said in the beginning. That the Child Welfare Committees take away the child from the buyers, but then they say: we give it back. Because that is the best interest of the child. While these parents, as per law, should be jailed.

JD: Yes

AD: So, you have this whole intersection between legal adoption system and an illegal adoption system. I call that black-market adoptions. The most stunning point for me is that if we really go for

policy which, in short, the Hague Convention and the Guidelines put, then we don't recognise foster care or residential care anymore as a suitable manner of care at all.

JD: Hmm

AD: So we go for permanency, instead of continuity. If you go for permanency, then we have adoption.

JD: Well, adoption is certainly meant as a permanent solution for the lack of regular parental or family care.

AD: But what is wrong with institutions, which are like family-type homes, or with foster care.

JD: As we know there have been a lot of issues with institutional care, and most of the institutional care is not an alternative that you would recommend, unless it is absolutely necessary because the child has such serious mental issues that a regular foster couple cannot deal with that. Even with some intensive guidance and support.

AD: So what is the continuum of care, according to you?

JD: The continuum of care is to find a person for the child. Or persons. That are permitted to raise the child up till the age of 18. You want to have one person. Or one personS. And you do everything possible to keep those people, the child and their guardians or whatever you want to call it, to invest in that particular development. Make it a permanent solution. You can leave it to a couple whether they want to adopt or not. There are cases in the Netherlands where couples who have taken care of a child, 10 years or more, don't want to adopt it because they say, the child has a family and we don't want to replace them, whatever the quality of the family. So whatever family, we are not in that particular game. We take care of the child. We give the child the best possibilities, opportunities and then he/she will find her way in life. If necessary with our continuing support. We want to be permanent up-bringers of that child. Up till the age of whatever. He or she decides when to go its own way.

AD: In societies like India where you have casts, this system of foster care is very complicated to implement. Because children are treated differently if they are not from the family.

Within the family is maybe a different thing, but is already problematic. Foster care as we know it, or in Germany, is very problematic in India.

I see it also from adoptees, we are getting now much more contact to domestic adoptees and the way they are being treated. Really horrifying stories.

JD: What are you looking for? Solutions?

AD: No, solutions...

JD: Prohibit all forms of adoption?!

AD: I am not saying prohibit all forms of adoption. I am saying that in India adoption is being made a full form of child protection measure within the Juvenile Justice Act 2015. It came already in in 2000, was a little bit reformed in 2006. But it was unusable. In 2008/2008 the Courts started using it. Now it is in the Juvenile Justice Act. Statutory Law. For the State it is good: they can sell the children. Five thousand dollar you get for selling a child abroad. And that cannot be.

JD: No. I think, and I don't know if that development is likely in India, but in my country adoption started as a measure of child protection.

AD: In the Netherlands.

JD: Yes. But it is not a measure of child protection.

AD: How did it start?

JD: In terms of its creating, it is more in the area of creating new form of permanency or a family environment for the child. And the adoption is therefore not so much, let's say, exclusively depending on the protection needs of that child.

AD: Was it more to protection needs of the adoptive parents who got children after the Second World War?

JD: Yes after the 2nd World War. And there are still situations in which adoption is meant to protect the child, but the child ultimately determines the protection. The traditional process is the child is taken away from parents, or the parents are just dropping the child anywhere, and so you have to do something for the child. So you find alternative care. See the Guidelines. What are you looking for? You are looking for family environment, is the philosophy of the Convention. So what are you looking for? Foster care. XXX are willing to raise the child as their own. That is in itself a challenge, but nevertheless that is what happens. And nowadays if that results in an adoption, that adoption is at that stage where the foster parents have taken care of the child for six or seven years, the decision to adopt the child is not necessary as a measure of protection of the child. It is not only to confirm the situation, but also to acknowledge the fact that this is a family and that the child is family of that couple. That is what the couple wants. As protection it is not necessary. They can continue as they are. Foster parents. And taking care of the child. Supported by the government. Because the government has the ultimate responsibility for those children. It cannot be taken care off by its own parents. So what the government does is give some money to those parents, per child. But ultimately to adopt the child, after 3, 4 or 5 years is not necessary from a point of view of protection. Correct.

AD: A child protection measure also means that the State can supervise. And once the child is adopted they are out of sight.

JD: Well, the downside of adopting the child is that they don't receive any government subsidy anymore. Because it is their family. And it is their child. So, they get a regular allowance, like everybody get in the Netherlands for children. But not the additional one that is given to foster parents.

AD: But what is your take on the reforms which have been done in Romania until 2004.

JD: I have no idea.

AD: You did not follow it at the time?

JD: No. No. I leave that to Nigel Cantwell, who has been camping there for big part of his life I think.

AD: In Romania.

JD: Yes.

AD: Why, what?

JD: Well, I don't know. Nigel became involved. But the point is

AD: How did he get involved at all?

JD: It started when he was working for the IFCU, International Council for Family and Child Welfare. IFCW. He was working there. He was disappointed by the fact that the office in Geneva received all kind of calls from parents, from other family members, and that children were either kidnapped,

abducted or whatever. Disappeared. And there was nobody taking actions and they did not know what was the reason for that disappearance of the child. But some of the issues was that they were exploited. And that happens also with children who were in alternative care, particular in institutions in Romania. So he decided after he tried UNICEF, UNICEF was not interested either, so he started his own organisation. Defence for Children. And the first purpose was to provide responses and appropriate formal actions to the complaints that came to XXX. 0:37:14.1 That lasted for, I think, a year or so.

AD: In the early nineties?

JD: No no that was 1978.

AD: In Romania.

JD: Yeah yeah, not specifically Romania, but it was Eastern Europe mainly where complaints, phone calls - at that time it were phone calls. There was no fax. Or they wrote a letter. Complaining about what happened to their child. And that nobody was taking actions. So, he felt that International Child Welfare Union should do something, which they did not. UNICEF was also not interested, so. The one way to do it is start for yourself, which I think was something without any money. So it was very difficult for him. He did it in the beginning as a kind of a part time activity next to a part time position in the IFCW. But ultimately it grew. Particularly in the next year 1979, the International Year of the Child. So we were meeting over and over again in Geneva on all kind of terraces, drinking coffee and talking about how you get money. Ultimately he got money from the Dutch government. Fifty thousand guilders at that time.

As a start. So that set him up, so then he could continue. But the beginning was, if you want to qualify it, a matter of alternative care.

And let's say the holes in the system of alternative care which allow apparently people take the child from that alternative care institution, and do whatever they wanted to do. It was not sure what they were going to do, whether they were selling the children to adoptive parents or not, whether they were selling them to the sex business, or to the labour market. We don't know.

But it was that particular point and I think that kind of beginning continued to trigger him when it comes to alternative care.

So that was...

What I did with the Guidelines was International Social Services, and Defence for Children at that time. They started, because we had the Day of Discussion, and I negotiated with the UK people in Geneva on Guidelines or on a study or on whatever. They were not very much interested, to put it mildly. So they sad, why don't you do a General Comment. Well, the General Comment was a matter of focussing on article 21. There was already the Hague Convention, so why would we do a job on article 21. Or on alternative care, which was then an idea which came up. And so ISS and DCI set up a Working Group on the Guidelines. Of course the Guidelines were, I think, at that time not meant to be approved, adopted by the Committee. And there was the idea to

AD: BCN was also involved in that later on. Better Care Network.

JD: Better Care Network, yes I was at the meeting in Brazil.

AD: With the Better Care Network

JD: Uh yeah, with uh, well there was... The Committee was represented in the meeting in Brazil. That was, I think, the final round of discussion on the draft in the meantime. Already Brazil was involved in that, and some other countries. Because the idea was to get it up to the highest possible level. That is an adoption by the General Assembly of the United Nations. Then it would be authorised as an international lobby group. That did not happen. Because, the reality is simple. The whole business of alternative care, institutional and foster care and adoption, which was not included in the Guidelines by the way, was politically a very sensitive issue. There were a number of countries who did not want to make that a semi binding document. It is not fully binding

AD: it is non-binding

JD: Non-binding. But if it was adopted by the General Assembly it got a status that made it not easy to just ignore it. It did not happen. So what we got is a Resolution that welcomed the Guidelines, and

AD: It is been presented as if adopted

JD: No, I don't agree.

AD: I know.

JD: Anyway, adoption was not part of the Guidelines.

AD: Well, even if it is not part, it is part because it is part of the continuum of care, the way NGO's or the NGO-world promote it. It became part of it, even though it is not in the Guidelines.

JD: It is explicitly stated in the Guideline. It was not included.

AD: In practice it works differently. In practice you have a child in foster care, like now in Romania - seven or eight years in foster care, and somebody in the US wants to adopt that child. An agency from the US books that child in foster care and they take that child out with Police force. From foster care. Even though that child was there for many years. So that is the current thing were the Guidelines or the Hague Convention subsidiarity principle - continuum of care - is being applied in practice.

We don't see foster care or residential care as a suitable manner of care anymore. It is just adoption and intercountry adoption.

JD: Well, I am not so sure if that applies to all 196 countries that have ratified the Convention. But it doesn't matter, the bottom line is: adoption in particular is a market. There is demand and there is a supply. And the supply is going down, then the demand moves to another country where the supply is more available than in other countries. Like Indonesia that had been blocking intercountry adoption. So no intercountry adoption. Well, you talk to somebody from the United States. So that's what you want? Having children lingering in institutions? That are too bad to live in. And don't feed the children. Education is almost nothing. Or very poor. So, that is what you want for the children. No intercountry adoption? Okay. Okay. Let them die in institutions.

AD: I don't think so. We work a lot with children in India and also with government authorities. Of course there are lots of issues. These have to be addressed. The government should address them. But I also know a lot of people who grew up in institutions, in residential care, in India. Many parents in India give their children in large boarding schools, which need a reform. But I don't think every child in an institutions dies.

Where do you base your research on, that institutions are bad?

JD: Well, I think there are still - if you talk to people from the United States, they always underscore that when it comes to options, you have the option for a child to be raised in a caring family in the US, or stay in an institutions in Kazakhstan, and I have seen those institutions, you don't want your child to live there. Then it is good, from the interest of the child. Listen, the child has no family in an institution. And any kind of attachment is of course avoided. The child is a thing that has to be taken care of.

As a worker in that institution you are not supposed to have a personal relation with the child. No.

AD: So you are strictly against every institution.

JD: Well, I am not setting the rules, but I listen to the guys and there is - even in the Netherlands - the difficulty of getting a personal kind of bond with the child. Because it is not your child. The child is there for a certain reason and it is not your child. If you want a child then...

AD: Why would the child, a lifelong, pretend to be somebody else? Just for the sake of being cared for.

JD: Well, you may argue with the people who do the residential care, whatever solution they have, the solution is not that there is a strong personal bond between a group leader and a child.

AD: that is not what I meant. Personal bond between a family or an adult with a child can develop. No doubt about it. But in adoption you have to change usually the identity of the child. The child has to pretend to be as if born to. So, why is that necessary for a child to be cared for?

JD: You mean in adoption?

Well, there is an ongoing development that, the Committee has always said we don't want to have closed adoptions. So you have to inform the child about her or his origins.

AD: Then why don't you keep the birth certificate? The original. Why you put the adoptive parents on the birth certificate? Why is it necessary to change the identity?

JD: The child... no there is no change of the child's identity as long as, well, if you think that if you are a child and you have an identity that is never going to change, then you are on the wrong track. When I was a child of one, I may have had an identity that I certainly don't have any more. And even as a child of eighteen, I had an identity that I have not anymore.

AD: To how many adoptees did you speak?

JD: Oh I have been talking to a number of them and I have ordered adoptions, intercountry adoptions, as a judge. This was one of the best moments in the judge activity. Was such a nice event. A child of four years old, and wanted to be on the picture with the judge, the parents. I think there are a lot of children adopted, and there is a lot of research on children and intercountry adoption in the Netherlands. It is not easy to do. There are problems, quite a number of them, but ultimately it is either in terms of what you want for the child, if you want to avoid any kind of incidents of black-market adoptions, then forcefully prohibit all forms of adoptions. Full stop.

Which I think no country is willing to do. But anyway,

AD: There was a report in the Netherlands, the RSJ report, which recommended to stop all intercountry adoptions.

JD: Yes, and it was considered to be a very stupid report by a lot of people.

AD: Why, for what reason.

JD: Because you don't come up with an alternative. If you tell them not to adopt children from Cambodia, Vietnam or whatever, you can only do that if you as a government in the Netherlands produce support for those children in Cambodia or Vietnam, to stay in their families, to help them to raise their children in their families.

AD: Do you consider that stupid?

JD: I consider it stupid if you make a report that says we have to prohibit intercountry adoption without having an alternative for the children who stayed behind in Cambodia. That is a stupid report. And I am not the only one with that view. It is never going to happen.

AD: What did Nigel think about that?

JD: Nigel, I don't know what he thinks about it. But he does not necessarily have an opinion on everything.

AD: Well, he has.

JD: [laughing] No you should not have an opinion on everything.

AD: Well, he wrote a report...

JD: Yeah, but... Anyway that is certainly not going to happen. That advice was a death at birth.

AD: You think.

JD: Yeah. [Laughing] That is not going to happen.

Come back to me if the Netherlands is going to prohibit intercountry adoption.

AD: We are working for that. I think the Dutch government should take responsibility. Can I tell your story [Naomi]?

So, she is a second generation of those children in poverty in Bangladesh. You remember the Bangladesh scandal?

JD: Uhhh... vaguely. But anyway, the question is what do you want. There are two movements. One that is very critical about intercountry adoption, wanting to stop it. There is another movement that wants to investigate all black-market adoption. You see it in the Netherlands now with the Brazilian cases. There are other cases in India, as you well know. They want to investigate it. And they want to bring all forms of black-market adoptions to light. What the purpose of that exercise is, I don't know. But anyway, those are the two mayor trends that I see nowadays, and I am not sure where it goes.

AD: Let me explain it, and I use your example [Naomi], okay?

So basically her mother was adopted, via what was at the time BIA. From Bangladesh. What happened in Bangladesh, with this terrible war and war-babies and so on, and of course huge poverty? And the Netherlands would not allow Bangladeshi families into the Netherlands. Because that migration is not allowed. So, Terre des Hommes in Geneva and Wereldkinderen (NICWO) they started a baby business. And that business was started on an ordinance of the Government, and that Ordinance was promulgated essentially on pressure of ISS, ISS-USA, and under that very sketchy regulation - essentially it says every child in residential care, even without consent of the parents, can be given abroad. And the Director of Social Welfare just had to sign that paper, transfer of guardianship. So

they abused and misused, in my opinion, the Guardians and Wards Act. Because of course the child gets out of the jurisdiction under guardianship. That could have never happened. By the way, in India too. Same, but more complex.

So, some children were genuine orphans, but as the adoptees now grow older they find out that they find the families back. There was a person in the eighties, Jack Preger, who worked there as a doctor, found that the families never gave up their children. They were given for care, protection, and so the adoptees went now back. They searched. And some were lucky to find back their parents.

She is not that lucky. Because we, and her mother, tried to trace her parents and the paperwork is fabricated. That is not the only case.

JD: Her mother was adopted from Bangladesh by a couple from the Netherlands.

AD: Yes, so that is one of the black-market legal adoption.

JD: You were born in the Netherlands.

NW: Yes.

AD: So, the second generation.

JD: Yeah.

AD: So, what the problem is here is an erasure of the original identity. Identity is a very strong concept. Not like you say. I don't think you understand the issue of a changed identity which we adoptees have. So, that is a real real different thing than what you are trying to say. I can very clearly say that my original identity was taken away from me, replaced with a new identity. So, her mother as well. I am born, according to my birth certificate, to a white couple, which can obviously not be. So that is a lie. It is a legalised lie. So, what many, not all, adoptees want is that we are able to reconnect to our original families to in part essentially restore - if possible - the original identity. Which is a right of the child anyway under the UNCRC. And that is so complicated, because you asked what is the use of those investigations, if the Dutch government did something wrong, which they did, they should pay for the expenses of the restored of the identity.

I myself gave up my job in 2001 and started working on this. Since that time I work 60 hours a week at least on these issues. We spend like 2 - 300 hours per case to search in India. Who is paying that?

JD: I was not aware of that, so I don't pay.

AD: I am not saying you should pay, but the Dutch government should pay. Because the way these adoptions were handled were not right. These adoptions which are currently handled from India are also not right. I consider, that's my argument, there is a right to life under the Indian constitution India may be poor, but they are now trying to send a rocket to the moon... It is really relative. Right to life means that the State has to care for the child, and not to send the child out of the jurisdiction. In any case, once you send a child out of your jurisdiction into another jurisdiction, it is gone. You know that as a judge.

JD: You consider all intercountry adoption as illegal?

AD: Yes.

JD: Okay.

AD: I want all intercountry adoption to be stopped. And the mess from the past be prepared.

JD: Okay. Good luck. The other issue is of course the identity, and the identity is in my view too easily used as an argument and there is no clarification to what you actually mean with the identity of a child in Bangladesh, three years old, and the identity of that child 18 years old in the Netherlands. You want to go back to that identity in Bangladesh. What do you mean by that identity? Do you mean that the child has the right to know her origin?

AD: Listen, can you imagine when you are five. Can you remember?

JD: Yes, I remember when I was five.

AD: So now I take you to Bangladesh. Or India, or Africa. And let you grow up in a complete black environment. Complete different culture, complete different food.

JD: Yeah.

AD: And you attach to some people who are strangers, as if they were your parents, as if you have been born to them. I can tell you that it takes 30, 40 years until you start understanding the damage which has been done to you as a child. There are many many adoptees who are starting to unravel that the attachment they had, which you think is so nice for the child... I say it totally different. For the children the better the adoptive parents care for the child, the worse and more difficult it is to unravel what has been done to you.

JD: Okay.

AD: So I turn it around. The children...

JD: So the solution in your view is: stay in Bangladesh and don't get out of Bangladesh. Whatever the conditions are you are living in, whether you are in an institution where you are almost dying because of lack of food. Lack of education. That is fine.

AD: No I am not saying that. But if you go to Bangladesh, as a Dutch organisation, and you say you want to help a child. Then you have to follow the UN Convention. And respect the Right of the Child. So, if a child needs care you give it to them in Bangladesh. If an institutions is horrible, you reform it in Bangladesh. I am not saying let the child die. That I am not saying.

So, if Wereldkinderen goes to Ethiopia, which they did, and they say they want to help children, then how can... I mean that it happened in the seventies and eighties in Bangladesh, one bad thing. But I went to Ethiopia and researched the cases of Wereldkinderen and they do the same there.

JD: If you talk about Dutch organisations wanting to help children in Bangladesh or in Ethiopia they should make their best efforts to keep the child in Ethiopia or in Bangladesh and help the family to raise the child.

AD: Help the family. Some children

JD: Well you can support the community if that is

AD: You can support the community, but there is always a way of taking care locally. You don't have to take a child out of the country.

JD: No.

AD: I really don't see it. I have been in Malawi, I have been in poor countries. I have been in Bangladesh, of course I spend a lot of time in India. I don't see a reason to take a child out of India.

JD: Okay

AD: Absolutely no reason. India can take care.

JD: I have no intention to do so.

AD: No. But you created the framework. With the Guidelines - and The Hague - you created the framework.

JD: Okay, but the bottom line in my view is still, when it comes to adoption and intercountry adoption the willingness of the government of that country to make sure the children have no reason to leave the country for whatever. So Bangladesh, the government of Bangladesh invest in children. Make sure that children cannot be taken care of by their parents, be taken care of by alternative foster parents, or if necessary institutional care. Make sure that children don't need to leave your country. That's the government's obligation.

AD: Yeah, and the Hague Adoption Convention, Roelie has written a very extensive article about it, has proven in Romania that it actually erodes the local child protection system. And I see it now in India, because obviously you get 5.000 dollars for a child when you send it abroad. So, 700 children died in the last two years in adoption agencies. Because they don't have an interest to take care of the children. Seven hundred children in two years. In the adoption system, what child protection is left?

JD: Okay.

AD: And the agencies, there is the Integrated Child Protection System, which give government funding. These funds are unutilised. Because the agencies don't want the government control. They rather take illegal donations from adoptive parents, then utilise government funding. So the adoption system does not help the child.

JD: Okay.

AD: And if you go to India you have, you know what a Child Welfare Committee is in India? It is like a Court, like Judiciary. Like a magistrate first class. It is a bench of at least three people, no judges, but social workers. With the powers of a magistrate. All children matters, need for care and protection, are dealt with by the Child Welfare Committee. There is of course a problem if the Child Welfare Committee is connected to residential care or adoption agencies. In almost every CWC you find that link. So once you create a market like we have it, you cannot even be sure that a child is not be taken from the parents or if it not just has been declared as foundling though it wasn't.

JD: Hm

AD: So, when you put so much money in the system

JD: I am still down by the point that I made, and I can repeat it and I don't do that. I am not going to repeat point. My point is that every country's government has the obligation to make sure that the children in their countries are taken care off in an adequate manner.

AD: Correct. That is what the UN Convention on the Right of the Child is about.

JD: So, if they do that, and they can include domestic adoption as tool in their protection system, but make sure that you do it in such a way - and make all kind of necessary measures - to prevent the adoption outside of the country. But you know the reality. Of course that has to be a policy. What happens next, there are still illegal channels where children are taken through getting out of the

country? But if you know that as a government, you take the necessary measures to protect the children.

AD: Punish the buyers.

JD: Well, that is what you should do and also in collaboration with the country that is the receiving country at the other end of the story. And make sure that those people, and that is a matter of agreement, you can talk about extradition, you can talk about extra-territorial jurisdiction or whatever you want, but to make sure that those practices are stopped you have to take adequate measures. Extra-territorial jurisdiction for the authorities in Bangladesh to prosecute the couple that took illegally a child from Bangladesh is one way to do it. To have an agreement by which the Dutch government is extraditing citizens of the country that is very unlikely, because almost no country wants to extradite their own citizens. But you can have an agreement on extraterritorial jurisdiction in terms of an agreement between two countries in order to make adequate enforcement.

AD: Under criminal law. These treaties exist. Point is, what you say was actually done in Romania.

JD: Yeah.

AD: So, it is very simple. When Romania wanted to join the EU, the UNCRC is primary EU law, and not the Hague Convention

JD: Yeah.

AD: So the European Commission gave Romania the money and reformed the system.

JD: Yes.

AD: At least so, not 100% perfect, but from a policy very clear.

JD: Yes.

AD: They gave the money and the system was reformed.

JD: Okay.

AD: Did you ever speak to Roelie. Did you speak to Roelie Post, who did that actually - that job - for the European Commission.

JD: No, I didn't. [Small voice]

AD: What did you think about that reform?

JD: Well, in terms of addressing intercountry adoption I stick to what I said. And one of the additional considerations if you really want to reduce and if possible eliminating intercountry adoption, you have to look at other models. The optional protocol on the sale of children is one of them, where you have a clear definition of what are crimes, you have to define the crime in your penal code. You have to have in place enforcement instruments and you have to have in place extraterritorial jurisdiction. Look at the Optional Protocol and the extradition is there. And look at that model and kind of translate it for intercountry adoption. And make intercountry adoption - sexual exploitation of children is by nature a crime. Intercountry adoption is not by nature a crime.

AD: You think we should make it a crime?

JD: Well, you could make it a crime. I am not sure whether you get a lot of support for this. But you can at least make illegal adoption a crime.

AD: But they are, even in the EU Directive.

JD: Yes, but there is not enough enforcement. You have to have specific rules for what constitutes illegal adoptions. Because is it a crime if parents gives their child to a couple, under the agreement that that couple is going to raise the child. Keep the mother posted on the development of the child etc. Is the mother committing a crime there?

AD: Well, it is not allowed. At least not in The Netherlands. At least partially, I mean you can do that?

JD: It is an agreement between foster parents and a parent, on raising her child. Because she is not in a condition to do so.

AD: Still under current rules you can do that.

If you say a child should be raised by your neighbours...

JD: Okay, my time is up.

AD: Thank you very much.

JD: You're welcome and good luck. Are you also into, because that is one of the important issues for further discussions in this area, trying to generate support from governments for adopted children who want to have contact with their family of origin?

AD: That is how I started. I searched for my own roots and so we do a lot of searches for Indian adult adoptees. And we also did a bit on Bangladesh. And I could do Ethiopia, but... much easier actually than other countries.

JD: Okay, but that I think is very important for children who want.

AD: Yes, but who should do that. That's the question. The ones who did the adoptions, or were involved in the adoptions, or...

JD: The child herself, or himself.

AD: How is that possible?

JD: It is not going to happen when the child is still nine or ten years old.

AD: We are talking about 20, 30 year olds. But, you know, I left my job in 2001 to travel for years to India to find people who could help me locally. I don't speak the language.

JD: But you can set up a system. It is for adopted children who want to have...

AD: We have set up a system. A private financed system, which is not right. It should be financed by the State.

JD: Yes. So why don't you make po-li-ti-cians supporting your idea that the government has to fund.

AD: We are working on that. It is very hard. The government is not very happy about that. So they want to give the money to those organisations that set the system up or were, like in India, involved in the adoptions.

JD: Yeah, but if you do it as a child you may need some support.

AD: You cannot do it alone.

JD: Not only in terms of money but also

AD: You cannot do that alone.

JD: Yeah. Okay.

AD: I mean, you can do it but it takes a lot of time. To navigate that country. And a lot of money. And that is why I think there are other organisation who do it for Bangladesh, Indonesia, or Colombia. And none of us is funded. Since years.

JD: But it is all possible through private funding.

AD: And unpaid work.

JD: Yes, yes, yes.

AD: Volunteer work and that is not really sustainable long term.

JD: No.

AD: There is a lot of travel involved. Abroad. Back and forth. There is counselling involved.

JD: You should try to find support from governments. Start with the Netherlands, or look at the EU-level.

And make a plan.

AD: What could we do at the EU-level? Nigel was there two months ago.

JD: And what was he doing? Trying to get money?

AD: He was on the Forum on the Rights of the Child.

JD: Yeah yeah. Yes there is that Fundamental Rights Agency. Or ARM [?] Depending on how you do it.

AD: You know Elisabeth Bartholet? The American law professor from Harvard.

JD: Yes, I know her very well. I had a discussion with her. And she was not in agreement.

AD: And then?

JD: Well, I still from time to time am informed about her activities and her centre.

At least ten years ago or more, that I had a last meeting with her in Harvard.

And she is, in my view, completely obsessed by intercountry adoption. So there is no kind of pros and cons discussion. You are pro or you are against.

And if you are against, you don't belong to us. She is very very...

AD: And, much earlier, you were actually not such a fan of intercountry adoption. I think.

JD: I have never been a fan of intercountry adoption but I don't believe people who say: Tell me how you can make it a world in which intercountry adoption is not necessary any more.

AD: We implement the UN Convention. So simple.

JD: The UN Convention allows intercountry adoption.

AD: Very limited. Only if there is no other manner of suitable care.

JD: Yeah.

AD: And the State has the obligation to set up local care, alternative care.

JD: Sure. But the State is in accordance with the Convention if it has intercountry adoption rules and practices. It is not against the Convention. The Convention does not prohibit intercountry adoption.

AD: It does not prohibit, but it does make it really

JD: Last option

AD: Only if there is really no other care available.

JD: Sure.

AD: On a macro level. You cannot go on a child's level, like you are doing it now on a micro level. Like saying a child in Bangladesh would have died.

JD: No no. But still. You have to go by the line of article 8 and the right to preserve your identity.

AD: Me. Identity. Yes, of course. That is one of the main articles.

JD: Yeah. So that's where you go when you want to convince the government. And in terms of preserving that identity for adopted children from other countries.

AD: How do you deal with cases where, like from India - from Bangladesh I have told you the story. So, from Bangladesh... in fact in her mother's case I have to say the paperwork is rather good. But yes, what does it help if it is fake.

JD: No no, but it is not only about illegal. It is about legal as well.

AD: Yes, I know. Legal. The paperwork is legal, but when we go out in the field - there is a village name, the mother's name - you would expect you go to the village and find the village, but no that village really does not exist.

The paperwork is fabricated. So that is one part of the case.

Now we have the Indian cases, the paperwork is good. And under the guise of secrecy to protect the privacy of unmarried mothers, the relinquishment documents has never reached the Netherlands. It has been shown, in practice, in the Indian High Court, they showed it is with the orphanage. The Wereldkinderen partner. She has the file, and Wereldkinderen does not have that in their office.

So now we have that article 8, right to identity, also under Dutch law very clearly, but the Dutch adoptees cannot access their original identity because the file is somewhere in India, in another jurisdiction. And in fact, all the Dutch Indian adoptees, let's say 80 to 90 percent, have all been stripped of their original identity.

JD: Well, if you suggest that it is impossible, then don't go on a mission that is impossible.

AD: I am not saying it is impossible. I said how do you compensate people for the loss of this paper.

JD: Well, if you want to compensate people for a loss you have to proof what the loss is and what the actual damage is, and how you measure the damage. That is not going to be easy.

So the point is, look at one other model. What happens to children born by artificial insemination? There the point is that in the adoption arena you may not lack a lot of information, but the children who have been conceived artificially have a right to know the origin of the father. They have set up a system. There is - you can apply if you want to have the information. As a matter of privacy and

protection of privacy of the parent, or parents, but there are very kind of convincing arguments. The child will not receive identifiable information, the child will receive all kind of medical and other information. But not the personal identifiable.

AD: No no, they have the full right now. There is no privacy any more.

JD: Yes, but they can... Point is there is just an evaluation of that law. The issue is that the first cohort of children that can apply for that information is appearing next year. Sixteen years or older. So, and there are a lot of short-comings in the current practices system. But nevertheless, if you want to do for all adopted children a possibility to preserve their identity

AD: For the past. Preservation from now on and in the future that is one topic. The other topic is this, or me, other adoptees my age or younger who want to find their roots. Their original family and the either the paperwork is fabricated, as in this case or the paperwork is in India. Inaccessible in the Dutch jurisdiction. And Wereldkinderen does not have it. Neither does Meiling have it. Nor do they have original birth certificates. That is a serious short-coming of the Dutch government, to let children in without clearing/having the full paperwork.

JD: Yeah, but if the rules were followed and you claim that your identity has been lost, then you have to prove that the government did something illegal.

AD: But how can you let in children without a birth certificate? You would not let anyone else migrate without

JD: It is not what you think. It is what the rules are and whether the rules were complied with. And if you cannot show that the rules were not complied with, which is hard to claim damages for that particular thing.

AD: You are an expert in law, not me. So, what were the rules then at that time? For migration, immigration of children.

JD: For migration?

AD: It is immigration.

JD: Yeah.

AD: We all came to the Netherlands on Foreign passports.

JD: They got a visa when they got adopted in the country of origin

AD: Bangladesh and India they got not adopted. They were adopted according to Dutch family law [Sic: civil law?]

And I really don't know. But in the Netherlands if you adopted in the mid-seventies, you adopt under Dutch law. You are the judge. You know better. Do you want to see a relinquishment document? Consent of the mother.

JD: Sure. But if that information was not available, it was not available in the country of origin of the child that was the end of the story. There were rules for that. You could try to get...

All children in Chili who were adopted in the Netherlands were born on the 1st of January. Because they did not have a birth certificate. So they had a fictional date of birth. Because we wanted to have a date of birth. So that was around that time. And it is not enough to say the child was born around December 1975. So what did they do? The authorities in Chili, I think it was, they made a birth certificate with a

date. And it was clear that the date was not the real date, because it was very unlikely that children in Chili were all born on the 1st of January.

AD: That's another chapter. Huge investigations going on now.

JD: Yeah, sure. But nevertheless. The point is, if you want to do something try to get xxx adopted children who want to find their origins and you can have all kind of difficulties. My answer to that is, don't get me the problems, get me the solutions.

AD: We solved 46 cases for India. Nobody has done that. Not ISS, not DCI, not Terre des Hommes. No-one. We did it.

JD: Find the support of those organisations. ISS - they were the guys behind the Guidelines.

AD: And they should support us?

JD: Or try to get an Optional Protocol to the Hague Convention on Intercountry Adoption.

AD: Optional Protocol [laughing]

JD: That would be the first in the history of the Hague Convention, but why wouldn't you be the first to do something.

It is like the Guidelines, the Committee has adopted Guidelines on the Implementation of the Optional Protocol on the Sale of Children, last May. 28th of May. I was there. They adopted the Guidelines. I was involved in the drafting of those Guidelines. It is the first time that the Committee ever adopted Guidelines. So why wouldn't the Hague Convention have an Annex to the Convention to address the whole issue that you have been bringing. And make it. Point is, you want to have all the countries that ratified the Convention, the Hague Convention I mean, also to ratify that Annex to the Convention.

THE END