CHAPTER 2


2.1 Introduction

This chapter intends to provide an overview of how key concepts in the children’s rights discourse such as ‘the child’ and ‘childhood’ are defined and employed, and to explore the theoretical and moral basis for children’s rights. The aim of the chapter is to describe the discourse within which Article 12 of the CRC is interpreted and implemented by various stakeholders and to put the article and the rights it establishes into a context beyond the legal sphere. For this purpose, the chapter provides a brief overview of the leading developments in the sociology of childhood (as part of ‘childhood studies’), and of key approaches to the foundation of rights for children. This in turn serves as a basis and a starting point for the analysis made in the following chapters.

On the concepts ‘child’ and ‘childhood’, it is important to distinguish between the definition or description of ‘the child’ and ‘childhood’ respectively. ‘The child’ is the living, breathing person inhabiting a particular temporal, cultural and social space, which is ‘childhood’.1 The two are sometimes conflated. It has been held that this leads to the position where children are not considered to be social actors in their own right, but are instead viewed as a theoretical concept, a means to perpetuate particular models and versions of what it is to be human.2 Furthermore, there are several ways of defining who is a child (legally, biologically, sociologically or culturally) and some of these definitions overlap, and some do not. It thus becomes obvious that, when venturing beyond the strictly legal sphere (which in many cases is necessary when discussing children’s rights in a particular context), what is actually meant when using terminology such as the ‘child’ and ‘childhood’ is more complex than legal provisions and norms would suggest.3 A sociological perspective adds to

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3 Hugh Cunningham, Children and childhood in western society since 1500 (Longman, 1995). Ennew, however, argues that the advances within childhood studies and the development of human rights for children ‘are no more than parallel processes within the same ingoing
the understanding of these concepts, which is also the reason for including it here. The reason for including an examination of the moral and philosophical grounds for children as rights holders is that the impact of a right lies not only in the fact that the norm is established by law, but also in its being considered legitimate and important by those affected by the norm, in particular those having power over how the legal right is put into practice. What is more, it also has a strong bearing on how the norm (if established by law) is formulated.

2.2 ‘The Child’ as an Object of Inquiry

2.2.1 ‘The Child’ in the CRC

Article 1 of the CRC establishes that

For the purposes of the Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

The purpose of Article 1 is thus to establish that when the word ‘child’ is used in the text of the CRC, it refers to anyone under the age of 18 unless national law establishes a lower age of majority. Nevertheless, Article 1 of the CRC is often referred to as a definition as such of who is a child, not least by its monitoring discourse on humanity’ and that this at least in part is due to a lack of interest (or even ignorance) on behalf of social scientists (Judith Ennew, ‘Has Research Improved the Human Rights of Children?’ in Antonella Invernizzi and Jane M. Williams (eds) The Human Rights of Children. From Visions to Implementation [Ashgate 2011] 136). Leena Alanen commented on the issue from a sociologist perspective in ‘Editorial: Taking Children's Rights Seriously’ (2010) 17 Childhood 5. I would add that it would be useful for legal scholars as well to examine other disciplines for additional perspectives on the rights of the child, as suggested by Michael Freeman, ‘The Sociology of Childhood and Children's Rights’ (1998) 6 International Journal of Children’s Rights 433 and Matías Cordero Arce, ‘Maturing Children's Rights Theory’ (2015) 23 International Journal of Children's Rights 283. See also Karl Hansen, ‘Killed by Charity’ – Towards Interdisciplinary Children's Rights Studies’ (2014) 21 Childhood 441; Bruno Vanobbergen, ‘Children's rights and childhood studies. From living apart together towards a happy marriage' in Wouter Vandenhole, Ellen Desmet, Didier Reynaert and Sara Lembrechts (eds), Routledge International Handbook of Children's Rights Studies (Routledge 2015); Berry Mayall ‘The sociology of childhood and children's rights’ in Wouter Vandenhole, Ellen Desmet, Didier Reynaert and Sara Lembrechts (eds), Routledge International Handbook of Children's Rights Studies (Routledge 2015).