

THE APPEAL TO TAMPERE’S POLITICS OF CONSCIOUSNESS FOR THE EU’S AREA OF FREEDOM, SECURITY AND JUSTICE

(Speech at CEPS, Brussels, on 3 October 2019)

It is a pleasure to participate in this conference on the 20th anniversary of the Tampere Programme. We stand at a privileged position between the past and future. This position enables us to assess the progress of the EU’s Area of Freedom, Security and Justice (AFSJ) since the Tampere European Council (15 and 16 October 1999), which adopted the Tampere Programme, the entry into force of the Lisbon Treaty ten years later (1 December 2009) and the Stockholm Programme (2010) while, at the same time, looking forward in the light of the 2030 Global Agenda on Sustainable Development.

The Global Agenda has devised important priorities and targets with a view to ‘stimulating action over the next fifteen years in areas of critical importance for humanity and the planet’. Among them is Goal 16 which sets out the aim of creating peaceful and inclusive societies. This includes the provision of access to justice for everyone and the development of ‘effective, accountable and inclusive institutions at all levels’.¹ Demonstrating exceptional insight and political leadership, the Tampere Presidency Conclusions also addressed this twenty years ago.

In my opinion, the Tampere European Council initiated an ‘agenda of consciousness’ for the EU’s Area of Freedom, Security and Justice. The timing was perfect. The Treaty on European Union (TEU), which metamorphosed the EU into a political union in 1993, had brought migration, asylum and the residence of long term resident third country nationals within the ambit of the Justice and Home Affairs Pillar of the EU, while it had introduced the

¹ UN General Assembly, Transforming Our World: the 2030 Agenda for Sustainable Development, 21 October 2015, A/RES/70/1.

institution of Union citizenship in the EC Treaty. The next Treaty, the Amsterdam Treaty, partially ‘Communitarised’ the Justice and Home Affairs Pillar of the TEU by bringing *inter alia* migration and asylum issues into the Community pillar. The Amsterdam Treaty came into force on 1 May 1999 – a few months before the Tampere summit.

When the Heads of State or Government met at Tampere, they agreed that ‘the challenge of the Amsterdam Treaty was to ensure that freedom, which includes the right to move freely throughout the Union, can be enjoyed in conditions of security and justice available to all. It is a project which corresponds to the frequently expressed concerns of citizens and has a direct bearing on their daily lives’².

For this reason, the adopted ‘Tampere Milestones’ were of constitutional importance for the European Union. I believe they were also normatively important for building ‘inclusive and peaceful societies’ in line with Goal 16 of the Global Agenda mentioned above. Their normative appeal was heightened by the attempted depoliticization of migration and asylum in European societies and a call for the transformation of personal and collective identities in the EU.

TAMPERE’S POLITICS OF CONSCIOUSNESS

Tampere’s Milestone 1 noted that ‘from its very beginning European integration has been firmly rooted in a shared commitment to freedom based on human rights, democratic institutions and the rule of law. These common values have proved necessary for securing peace and developing prosperity in the European Union. They also serve as a cornerstone for

² European Council, Tampere Presidency Conclusions, Brussels 15-16 October, SN 200/99, Milestone 2, pp. 2-3.

the enlarging Union'. And Milestone 3 continued: 'This freedom should not, however, be regarded as the exclusive preserve of the Union's own citizens. Its very existence acts as a draw to many others world-wide who cannot enjoy the freedom Union citizens take for granted. It would be in contradiction with Europe's traditions to deny such freedom to those whose circumstances lead them justifiably to seek access to our territory. This in turn requires the Union to develop common policies on asylum and immigration, while taking into account the need for a consistent control of external borders to stop illegal immigration and to combat those who organise it and commit related international crimes. These common policies must be based on principles which are both clear to our own citizens and also offer guarantees to those who seek protection in or access to the European Union'.

Such milestones emphasised that the long-term project of European institutional design is anchored on freedom, human rights, democratic institutions and the rule of law. Tampere highlighted the fact that the EU is a political community based on fundamental values long before the entry into force of the Lisbon Treaty which expressly refers to the Union's values in Article 2 TEU. In these milestones we also witness the linkages between internal mobility and the EU's openness to 'Others', that is, to third country nationals seeking 'protection in or access to the EU'. The formulation of common policies on asylum and migration based on a just and compassionate relationship with the Other were not seen as self-standing; they were correlative with, and co-dependent on, the presence of democratic institutions, respect for human rights and rule of law-based constitutional frameworks. In other words, in Tampere the Heads of State or Government of the Member States awoke the EU's self-consciousness through a number of reflections on its role in the world and its entanglement with 'Others', that is, third country nationals seeking entry, residence or recognition and equal rights in the EU. The priority of this interrelationship is striking even today; it subverted the language of market integration featuring in European Union documents and other insular monologues.

For the first time, we have had an explicit recognition on the part of the leaders of the EU Member States that ‘the Other’ cannot be excluded from the internal process of EU’s self-development. This interplay between internality and externality created a vision of a different political space. A political space that goes beyond gestures of giving visibility to the claims of migrants and to the plight of refugees and asylum seekers and even beyond declarations of condemnation of their unjust and disrespectful treatment. It was a vision about sharing a political space and, thus, a vision of creating a shared, common, political space based on mutual respect and principled politics.

As Milestone 4 stated, ‘the aim is an open and secure Union, fully committed to the obligations of the Geneva Refugee Convention and other relevant human rights instruments, and able to respond to humanitarian needs on the basis of solidarity. A common approach must also be developed to ensure the integration of those third country nationals who are lawfully resident in the Union’. The Tampere milestones thus showed that the EU is not a self-bounded and self-referential entity; it achieves its presence and purpose through reflection on its aims, objectives and values and on its relationship with its internal and external citizens and subjects. This means that the European integration process cannot be viewed as prior to, and independent from, how the EU regulates the European socio-political space and the role of human beings within it.

THE POLITICS OF RESPECT FOR FUNDAMENTAL RIGHTS

Ten years later, the AFSJ’s Stockholm Programme built on Tampere and adopted a number of ambitious policy orientations and priorities in order to make the AFSJ a reality. It brought forth a clear ‘citizens-oriented’ and ‘rights-based’ perspective and re-balanced ‘freedom’ in the area

of freedom, security and justice. As the Commission's Action Plan Implementing the Stockholm Programme stated: 'The main thrust of Union's action in this field in the coming years will be 'Advancing people's Europe', ensuring that citizens can exercise their rights and fully benefit from European integration. ...A European area of freedom, security and justice must be an area where all people, including third country nationals, benefit from the effective respect of the fundamental rights enshrined in the Charter of Fundamental Rights of the European Union'. And under Priority 2, entitled 'Ensuring the protection of fundamental rights', it noted: 'The protection of the rights enshrined in the Charter of Fundamental Rights, which should become the compass for all EU law and policies, needs to be given full effect and its rights made tangible and effective. The Commission will apply a "Zero Tolerance Policy" as regards violations of the Charter'.³

Migration and asylum laws and policies had to operate under the shadow of the EU Charter of Fundamental Rights. As regards migration, the Commission observed: 'robust defence of migrants' fundamental rights out of respect for our values of human dignity and solidarity will enable them to contribute fully to the European economy and society. Immigration has a valuable role to play in addressing the Union's demographic challenge and in security the EU's strong economic performance over the longer term. It has great potential to contribute to the Europe 2020 strategy, by providing an additional source of dynamic growth'.⁴ In addition, the Action Plan's Annex on ensuring the protection of fundamental rights included seven concrete actions which had to be implemented by 2011.

Both Tampere's 'politics of consciousness' and Stockholm's 'politics of respect for fundamental rights' made it clear that breaches of fundamental rights, rule of law and

³European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Delivering an area of freedom, security and justice for Europe's citizens – Action Plan Implementing the Stockholm Programme, Brussels, COM(2010) 171, p. 3.

⁴ Ibid, p. 7.

democratic standards were not purely domestic, that is, national, matters. On the contrary, they were, and continue to be, vital issues of common European concern. Such issues need to be dislodged from the anchor of national sovereignty because illiberal practices, infractions in the operation of democracy and human rights violations detrimentally affect the Union, the European Area of Freedom, Security and Justice and the EU's relations with its citizens and subjects. Any departure from the constitutional fundamentals affects both the concrete operation and the legitimacy of the European Union in addition to placing individuals in precarious positions and restricting the exercise of their rights in the European political space.

Tampere and Stockholm, therefore, delineated a principled way forward for many relevant contexts by showing the correlation of issues and their importance for meaningful European cooperation and solidarity and for the betterment of the life worlds of human beings in the EU. For this reason, I would argue that the present challenge facing the European Union is not so much one of devising new priorities and policy-goals for the AFSJ, but of realising the proclamations of Tampere and Stockholm and implementing the priorities decided by European leaders twenty and ten years ago. It is certainly the case that concrete advances have been made since 1999 and 2009; the EU has now its legally binding 'Bill of Rights' which complements, updates and advances the European Convention on Human Rights. But at the same time, as certain Member States' commitment to liberal democratic values becomes weakened and endangered by the aggressive manifestations of populist neo-nationalism and authoritarian executive rule, Tampere's and Stockholm's explicit call for a pan-European convergence on human connectivity, respect for the rule of law and respect for values becomes pertinent.

In the face of binary oppositions, polarisation and divisions in European societies, increasing manifestations of racism, xenophobia and hate speech and the disrespectful treatment of EU citizens in certain Member States, EU institutions need to uphold the values

of democratic engagement and respect for human rights and the rule of law. This should be done as a matter of principle. For respect for democracy is not tantamount to mobilising consent, mirroring public opinion, and delivering effective executive governance. It is about airing the values of fundamental rights, promoting connectivity among people, individuals, groups, societies and governments, and eschewing rigidly stratified hierarchies among ‘us’, ‘them’ and ‘in-betweens’. It is about respect for human dignity and the promotion of open and inclusive societies.

Through concrete deeds, the EU must resist the otherisation of humanity, that is, the tendency of national executives and privileged majorities to separate, discriminate and stigmatise people or to make them non-persons which is prevailing, and expanding, in other parts of the world. It has to do the right thing in all its actions. For example, every year approximately one third of the newcomers are children – many of them unaccompanied, who are in need of protection and not detention. Some governments have closed their ports to search and rescue boats leaving migrants and refugees, including children, stranded on board often without drinking water and food. There is also a gap between the EU’s internal fundamental rights policy and its external commitment to human rights and even with respect to the former significant challenges remain. Tackling racism, discrimination, intolerance and xenophobia is an urgent challenge. Ensuring that Member States implement the Charter of Fundamental Rights in their administrative, legislative and judicial procedures and that their actions are Charter compliant, in line with their legal obligation to respect, observe and promote the application of the Charter,⁵ is another significant challenge. As the Commission’s Action Plan observed in 2010, ‘in a period of change, as the world only starts to emerge from the economic and financial crisis, the European Union has more than ever the duty to protect and project our values and to defend our interests. Respect for the human person and human dignity, freedom,

⁵ Article 51(1) EUCFR and Article 54 EUCFR on the prohibition of abuse of rights.

equality, and solidarity are our everlasting values at a time of unrelenting societal and technological change. These values must therefore be at the heart of our endeavours.’⁶

Evidently, the Tampere and Stockholm programmes take us beyond the festival of breaches of the rule of law and the desired untrammelled dominance of executive ideologues we have been witnessing since 2015. We understand where we stand today in comparison to where we stood in 1999 and 2010 and what needs to be done. As a critique of the present and a principled vision for intersocietal and interpolitical life in the future, the Tampere Milestones continue to be impressive!

⁶ Action Plan, n. 3 above, p. 2.