



QUEENSLAND BRANCH NEWS

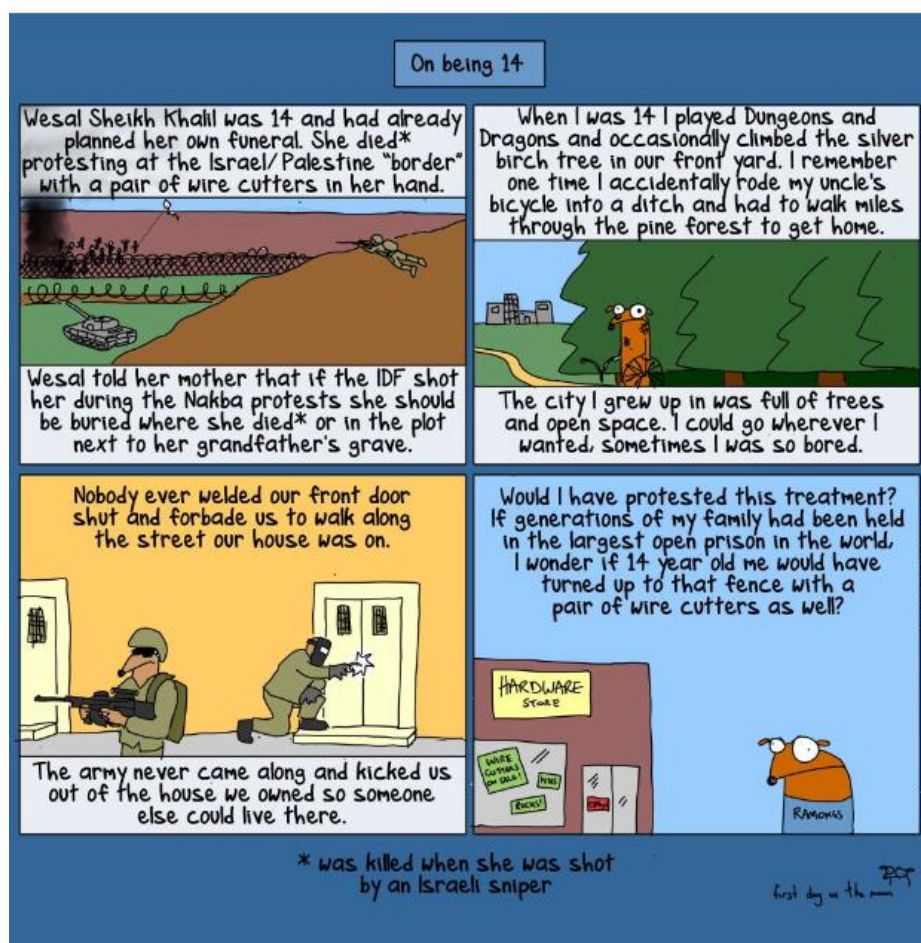
NEWSLETTER of the QLD Branch of the MARITIME UNION of AUSTRALIA

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To be truly radical is to make hope possible, rather than despair convincing - Raymond Williams No. 131 - 18 May 2018

When I Was 14 - Ministerial Meetings - Inaugural CFMMEU ATSI Conference - IDC News
Bench Confirms No Leave Accrued During Lockouts - FWC Uber - Book Review - Film Review

When I Was 14 by Bob Carnegie



Cartoon by First Dog on the Moon

This week's front page of our little newsletter tackles one of the most important and intractable global political issues that is now in its 3rd generation; the Israeli - Palestinian confrontation.

This week has seen more shooting of protesters in the Gaza Strip, the number of victims are in their thousands.

I'm one of the people on the left who passionately believes in a two state solution BUT the Palestinian people must have a State that is viable. Since 1967 the State of Israel has, through illegal settlements and seizure of lands, made this a virtual impossibility. The UN

Resolution on Israel retreating to its 1967 borders must be implemented.

I'm an amateur student of the Shoah or Holocaust. I understand and believe in the Jewish people's right to a homeland but those in power in Israel seem to think only of a cruel and avenging God and not of a kind and compassionate one.

The time has come for the International Working Class to protest this type of State sponsored terror being waged by Israel on the people of Palestine.

As the Branch Secretary of the Maritime Division of the newly merged CFMMEU I call us to take action in protest.

I will be writing today to both the International Transport Federation (ITF) and the International Dockworkers Council (IDC) to work urgently together to formulate a day of protest supporting the right of the Palestinians to a homeland and protesting the barbaric slaughter of civilians by the Israeli Defence Forces, and for both bodies to put all petty differences aside. I know as a Zone Coordinator for the IDC this is the sincere wish of our organisation. As working class people, the horrors in Palestine must be stopped.

Ministerial Meetings by Bob Carnegie

OVER THE LAST 2 weeks the Branch has been involved with meetings with both the Police Minister and the Emergency Services Minister.

The meeting with the Police Minister was organised by the Branch to assist the ITF in its quest for justice for a seafarer who was lost at sea on a cattle vessel.

Dean Summers, the head of the ITF Seafarers section in Australia, along with ITF relieving Queensland Inspector, Damien McGarry, put a passionate and well researched

Authorised by Bob Carnegie, Maritime Union of Australia (MUA) Queensland Branch Secretary

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case to the Minister on jurisdictional matters and protocol.

The meeting was a warm and positive one with the Honourable Mark Ryan extremely engaged and pledging his support in attempting to get some Australia first protocols instigated.

More meetings will follow.

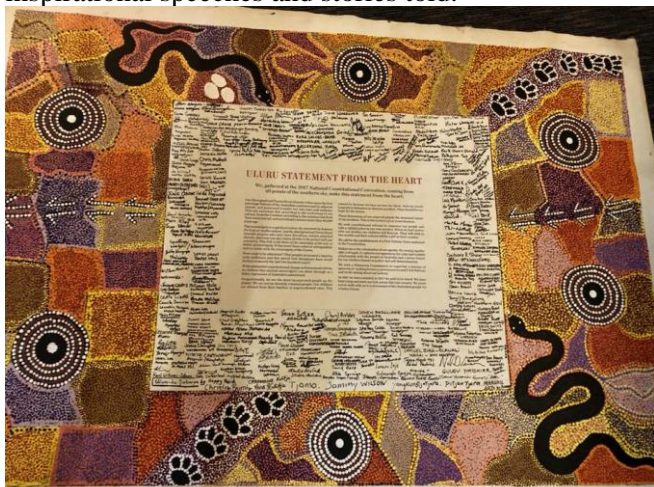
The Branch Secretary met with Emergency Services Minister as part of our efforts to have Fishermen's Island covered 24/7, 365 days by the base at Whyte Island. More talks are to follow.

ATSI Conference Cairns by Paul Gallagher

THE VERY FIRST CFMMEU Aboriginal Torres Strait Island Conference in Cairns on 1st -2nd of May was the most educational and inspirational Conference I have witnessed in years. I would like to congratulate all those who organised and attended the Conference.



Led mainly by Terry O'Shane, Thomas Mayor and Paddy Neliman, who were all excellent in their own right, it was the rank and file delegates from all over the country through participation, passion and storytelling made it so special. There was a great feeling of solidarity and purpose being the first combined Conference as the new union. There were many special guests with inspirational speeches and stories told.



The local traditional dancers at the dinner was also a highlight.

Among other important initiatives there is now strong support from the union to support the Uluru Statement From The Heart. Briefly, the Uluru statement rejects the idea of minimalist or symbolic changes to the Constitution. Instead it calls for a constitutionally enshrined First Nations voice to Parliament, along with a Makarrata Commission "to supervise a process of agreement making between governments and First Nations and truth-telling about our history". The union resolved to campaign at all levels to achieve its aspirations through a referendum.

MUA Queensland Branch delegates were: Terry O'Shane, Paddy Neliman, Adam Corowa, Vicky Morta, Michael O'Shane, Clinton Tipu, Paul Gallagher and Paul Petersen.



Terry O'Shane and Paddy Neliman representing the Queensland Branch

Inaugural Aboriginal & Torres Strait Islander Conference Resolutions 3 May 2018

Resolution 1

This CFMMEU ATSI Conference condemns in the strongest terms the LNP's Intervention policy and the CDP Programs that have entrenched injustice and inequality for our ATSI brothers and sisters and in their communities.

The continuing of these racist policies contribute to the widening the gap between

Indigenous and non-Indigenous Australian and must be abandoned. The

Governments of all persuasions should adopt a policy of genuine engagement with First Nation peoples and communities in order for those communities to determine what is in their best interest at both a local, regional and national level.

Resolution 2

This CFMMEU National Conference of Aboriginal and Torres Strait Islander members pledges its support of the current campaign by Torres Strait Islanders for control of their waters and respect for their internationally recognised legal rights both in traditional and economic terms. The CFMMEU will work with Malu Lamar and the Torres Strait Island community to raise awareness of their fight to secure the prosperity for their people and

future generations and we will support their campaign in all way possible both politically and/or industrially.

Resolution 3

Uluru Statement Resolution

The Inaugural Aboriginal and Torres Strait Islander Conference of the Construction Forestry Maritime Mining and Energy Union resolves that we strongly support the Uluru Statement from the Heart.

We acknowledge that the consensus at Uluru was a constitutional moment, a moment of national consensus and self-determination. We congratulate the participants at Uluru for their efforts in the face of many broken promises and divisive actions by Governments over many years.

We will campaign at all levels, including politically and in the community, to achieve its aspirations of a constitutionally enshrined First Nations Voice and a Makarrata Commission.

Resolution 4

Structure of Indigenous representation and activism

The Divisions are to identify First Nations members and hold meetings of First Nations members to form local structures/committees before the 2018 CFMMEU National Conference.

Further, Divisions through these meetings and in collaboration with Indigenous rank and file members, will identify two rank and file representatives to form a National First Nations Peoples Committee taking in to account, where possible, gender balance.

The committee shall be comprised also of elders to assist and guide the committee.

Upon the establishment of the committee, the committee will be convened as soon as possible after the National Conference to formulate a constitution.

Resolution 5

Divisional Indigenous Officers

This conference recommends that each division consider employing a full time First Nations Peoples Officer and include an Indigenous representative officer in the decision making body at their Divisional level.

Resolution 6

National Indigenous Officer

This conference calls on our union to employ a full time First Nations Peoples Officer to work and support work on Indigenous rights across the divisions.

Resolution 7

Support for representative committees and education

This Conference of First Nations members calls on the union to continue and improve on the unions support for Women's, Youth and First Nations representative committees. We believe that these committees are vital to education campaigns about issues that are important to these groups, and our education of members must also continually improve.

Resolution 8

This Conference has identified the following priorities as important work for our Union. These issues should be

considered by the newly formed First Nations Peoples Committees for further policy development, campaigning and implementation.

- To work towards empowering our people to effect decisions about us, and to self determine at all levels of government in this country. This would include adoption of the Uluru Statement from the Heart around voice, treaty and truth.
- Promote and enforce strong workplace rights, support employment, training and culturally appropriate mentoring.
- Engagement with Aboriginal and Torres Strait Islander communities and workers to build effective networks and support.
- The need to raise awareness with non-indigenous members of First Nations Peoples' issues and challenges, understand cultural history and build respect to address racism and discrimination.
- The need to address exploitation of indigenous labour hire.
- Training our union officials to be able to advocate on behalf of First Nations members and communities.

Bench Confirms No Leave Accrued During Lockouts

Sourced from: www.workplaceexpress.com.au

This is an important decision. What it means should (after say 48 hours of industrial action) the employer retaliates with a 48 WEEK lock out the affected workers accrue no leave. Another example of the broken industrial relations system. Bob Carnegie

An FWC FULL bench has upheld a landmark ruling that Carter Holt Harvey employees did not accrue annual or long service leave during a 74-day lockout last year, noting that those taking protected action should be aware the employers might not pay them during "response action".

The CFMMEU and CEPU argued that Deputy President Val Gostencnik in January wrongly held that a lockout period is an "unpaid authorised absence" for the purposes of s22(2)(b) of the Fair Work Act and that employees are therefore not entitled to accrue annual leave during that time (see Related Article).

The unions contended that lockouts are "directed" absences, as opposed to them being "authorised" by employers and thus not covered by s22(2)(b).

Deputy President Gostencnik's decision was also "incorrect and unfair because it imposes an additional sanction on employees who are already not receiving their usual remuneration" during a lockout and the Fair Work Act "does not expressly contemplate that sanction", the unions said.

However, Senior Deputy President Jonathan Hamberger, Deputy President Alan Colman and Commissioner Katrina Harper-Greenwell this week

found Deputy President Gostencnik's interpretation correct.

Not only was the ordinary meaning of "unpaid authorised absences" quite clear – embracing the circumstances of a lockout period – there were also "a number of other reasons to agree with the Deputy President's interpretation of s22".

Observing that the terms "authorised" and "directed" were not "not mutually exclusive", the bench said that when employers are aware of employee absences and endorse them, "or perhaps even initiates or requires it", the absence is authorised.

"Whether the employees want to be absent or not does not determine whether the employer has authorised the absence," the bench continued.

"If anything, the fact that the absence is at the employer's direction strengthens the proposition that the employer must have authorised that absence."

The bench also found that Deputy President Gostencnik's interpretation of the section "accords more readily with s416 of the FW Act, which provides employers with the discretion to refuse to pay their employees for periods of employer response action".

"Effectively, this section permits employers to treat employer response action in the same way as protected industrial action by employees, and not pay them," Senior Deputy President Hamberger, Deputy President Colman and Commissioner Katrina Harper-Greenwell said.

"A key principle reflected in the scheme established by Part 3-3 of the FW Act is that employees who take protected industrial action should be aware that not only will they not be paid for the period of their own industrial action, but also that they may not be paid for any period of employer response action that follows as a result of their own industrial action.

"It would be disharmonious with that principle if employees were entitled to accrue annual leave for periods of employer response action because they counted as service," the bench said.

"The employer would effectively be required to make a payment to the employees 'in relation to the period of the action', which sits uneasily with the discretion afforded to the employer by s416."

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia; Construction, Forestry, Maritime, Mining and Energy Union v Carter Holt Harvey Woodproducts Australia Pty Limited [2018] FWCFB 2731 (15 May 2018)

International Dockworker's Council Report Back IDC in Valencia



THE IDC EU WORKING group was gathered in Valencia from 30 to 31 January. At the end of January, IDC organised a meeting of the working group to discuss health and

safety issues, define the guidelines to follow around the Sectorial Social Dialogue Committee within the framework of the European Commission, and study the situation of women within the stowage.

The group had the opportunity to make an interesting guided tour of the Port of Valencia.

IDC African Assembly



THE 7th AFRICAN ASSEMBLY of IDC was celebrated from 21 TO 23 February in Ivory Coast. The successful African Assembly took place in Abidjan, Ivory Coast, with the participation of more

than 200 dockworkers representing 12 African ports, with the presence of IDC General Coordinator, Jordi Aragunde; the IDC European Coordinator, Anthony Tetard; the East Coast Coordinator, Kenneth Riley; and the African Coordinator of IDC, Pierre Guigrehi, who was ratified again by the assembly as African Coordinator.

Also attending were: Manuel Lanon, head of H&S of IDC EU, and Mark Bass, member of the American union ILA, who accompanied Kenneth on a solidarity mission in Liberia, where they began collaborating with an orphanage, sending a container full of rice, and nowadays they are pushing forward to build a school for children.

IDC in Belgium



IDC DELEGATES ATTENDED the SSDC meeting on 3 July 2018. IDC attended the Sectorial Social Dialogue Committee Meeting on March 7, 2018 at the European Commission in Brussels, Belgium.

Progress was made with the study on the social impact of foreign investments in EU ports and safety on board ships. The campaign "Women in transport" was discussed and a statement was made against gender violence. The next meeting is scheduled for July 4, 2018.

IDC Latin America Assembly



IDC CELEBRATED THE Latin American Assembly in Ushuaia, Argentina, from 9-11 APRIL 2018. Our colleagues from the Argentine

union SUTAP organized the Latin American zone assembly of IDC. The assembly saw the participation of 11 countries, with the USA, France and Spain as guests. Guidelines for best practices in Health and Safety issues were drawn, choosing Alejandro Díaz as Latin American coordinator for H & S.

It was agreed to pronounce against the policies of the Brazilian Government and in favor of Lula; a manifesto was written to repudiate Israel's repression against Palestinian people, reflected in the figure of Ahd Tamini, unjustly imprisoned. A letter of support to the Cuban people was also signed due to the economic blockade that the United States exercises over them. Parallel to the assembly, IDC sent two messages to the Argentine Government for not respecting collective agreements in Puerto Rawson and for the repression exercised against workers in the Province of Chubut. Members of the Government and the Port of Ushuaia attended to both, the opening and the closing of the meeting, emphasizing the good harmony with the IDC bases. A proof of this was the signing of a collaboration agreement between FUNESPOR, the Provincial Management of Ports and IDC for a dockworkers' training program.

Closing the Assembly, the Chilean representative, César Luna, was named the new IDC Latin American Coordinator.

IDC in Brazil "Ports in Crisis Conference"



IDC PARTICIPATED IN the international seminar "Port Work and Trade Unionism in the Ports in Time of Crisis" celebrated in Santos, Brazil 11-14 April 2018.

The IDC comrades: Rafa Egea, Joao Valerio, Antonio Mariano, Mauricio Zarzuelo and Ricardo Suárez, participated in the Seminar held in Santos (Brazil), bringing the IDC closer to the port workers present in the seminar and, at the same time, projecting the values of IDC from the city with the most important port in Latin America.

IDC Gathers in France

IDC WORKING GROUP was gathered in Fos Sur Mer, France from 24-26 April 2018. Fos Sur Mer was the chosen place to meet the IDC EU working group, thanks to the local organization of the CGT union.



The meeting, very focused on work on H&S issues, also included external experts to IDC in safety and occupational hazards, such as Ron Signorino (USA), invited for the occasion. Among the issues addressed include the use of safety boxes for work at height, the influence of wind and electrical storms as a risk factor in ports, fumigation of containers, electromagnetic pollution and smoke pollution of diesel engines. All this served to propose joint strategies that lead to effective regulation.

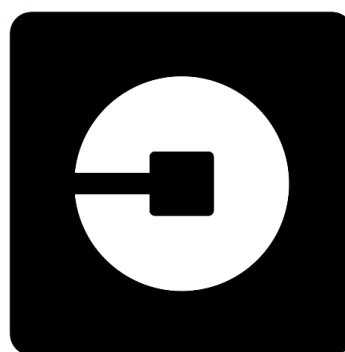
New IDC Comrades



IDC RECEIVED THE application for membership of the SDPS CNTS Trade Union of the Port of Dakar, Senegal. As mandated by the statutes, from today we have a new union affiliated to IDC, awaiting for the final approval of the assembly at the next general meeting. From IDC we welcome our new colleagues!

Uber Neither Employer Nor Platform, Drivers Not Entrepreneurs: FWC

Sourced from: www.workplaceexpress.com.au



UBER HAS REPELLED another attempt to establish that it is an employer, despite the FWC finding that a driver's relationship with the ride-sharing business was of "some magnitude".

In a case bearing many similarities to December's Kaseris decision by Deputy President Val Gostencnik (see Related Article), Commissioner Nick Wilson ruled that a self-represented driver who'd completed almost 4000 trips over 14 months was not an employee protected from unfair dismissal under s380 of the Fair Work Act.

Uber "deactivated" the driver on December 4 for a breach of "community standards" while refusing to

disclose its nature, but the driver speculated that it was related to two customer complaints.

Represented by a solicitor on the understanding that Australian-registered associated entity Rasier Pacific Pty Ltd had no employees, Uber argued that the driver was an independent contractor party to a succession of services agreements.

Noting that the driver's principal argument was "what he perceives to be the unfairness and injustice associated with his circumstances", Commissioner Wilson said that despite Uber's contention that the case was "indistinguishable" from Kaseris, there was still a need to test its characterisation of a tenuous relationship limited to access to a Partner App and payment remittance.

"Within the overall context of Kaseris, it is doubtful there was an intention to suggest that this was such a tenuous relationship that there could never be a possibility of entertaining a claim of employment, leading subsequently to the automatic dismissal of the matter," said Commissioner Wilson.

"Such would be wholly counter-intuitive to the facts then before the Commission, as well as greatly under-representing the analysis conducted therein.

"While it may be valid to view the Commission and court precedents on the matter of classification of employment as involving a dichotomy only between employee and independent contractor, and one that because of its limited prism does not countenance alternatives, Kaseris was settled in accordance with established precedent on the dichotomy."

Detailing the 1454 hours of activity logged by the driver over 14 months, the commissioner emphasised that "this was not an insubstantial or tenuous relationship".

"Consideration of the work actually performed by [the driver] informs a finding that the character of the relationship between him and [Uber], however framed or desired by Rasier Pacific Pty Ltd, is not about the development or use of technology, but the provision of transportation services.

"Certainly Uber's technology may be an aide to the provision of those services, or may make the provision of those services better or more profitable, however the technology has no purpose without the provision of transportation services by people such as [the driver]."

Nothing "especially entrepreneurial"

The commissioner commented that the driver performed "relatively high volume, largely unskilled [work]. . . alone with customers".

"He did not bring anything especially entrepreneurial to the arrangement, merely the provision of things such as his time and his car to deliver a homogenous transportation service to the customer who might rate his performance at the end of the trip, but more often than not did not do so.

"In their volume it is more likely than not that any one trip was indistinguishable to either [the driver] or the customer from the other 7 or 10 trips he did each day.

"He sold rides to customers and was paid for them, along the way paying a fee for the services rendered by Rasier Pacific Pty Ltd and its associates. "He may have been in business himself, but equally he may not. "Consideration of his work and his work environment does not persuasively lead to a finding that he was."

Most elements of relationship point away from employee

Turning finally to the "multifactorial test" established by the full bench in 2011's French Accent ruling to determine whether the driver was an employee or an independent contractor, the commissioner observed that the driver's contract with Uber "records that it was the parties' intention that there be a direct legal relationship between him and the passengers to whom he provided services".

"It also provided that there would be only a business relationship between him and [Uber], and that '[n]either Rasier Pacific nor Uber shall be deemed to direct or control you generally or in your performance under this agreement'. "The agreement explicitly states that [the driver] is not an employee of [Uber] or any of its affiliates, and that he indemnifies [Uber] if it is found he is.

"I am satisfied that, as with the applicant in Kaseris, [the driver] was able to choose when to log-in and log-off to/from the Partner App; that he had control over the hours he wanted to work; and that he was able to accept or refuse trip requests."

Together with that weak control, the commissioner determined that tax arrangements, not having to wear a uniform or display branding, equipment provision, being able to work for others and irregular remuneration pointed away from an employer-employee relationship.

"It is evident that the weight of those indicators leads to the finding that [the driver] was not engaged as an employee, but instead as an independent contractor. "Consideration of all but two of the indicators, delegation or subcontracting and capacity to suspend or dismiss, resolve against [him].

"While elements of the contract itself appear more consistent with an employment relationship (for example, those dealing with termination), most do not. "The nature of the work and its environment, in which unskilled work is performed, albeit alone, repetitively and over many engagements for the one principal also has some consistency, possibly greater consistency, with a finding of employment.

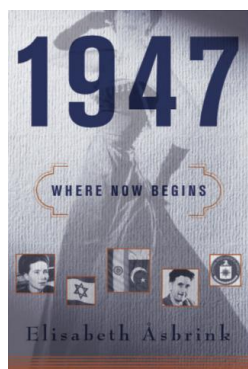
"Nonetheless. . . I am satisfied that the indicators I have found in favour of [the driver] are not in this case of sufficient weight to displace the findings made against his interests."

Janaka Namal Pallage v Rasier Pacific Pty Ltd [2018] FWC 2579 (11 May 2018)

Book Review by Tony Brown

1947 – When Now Begins

by Elisabeth Asbrink, Scribe Books 2017



ELISABETH ASBRINK CLAIMS that the year 1947 laid the seeds for much in our world today. In an amazing feat of research she read the entire year's collection of the world's major daily newspapers to bring together this compelling, easy to read book. And what a year! In the aftermath of the devastation of war it was meant to be a time of setting a new course for the peaceful settlement of

international and national disputes, and to establish political stability in an unstable world.

The Nuremberg trials were held, the concept of genocide was established, the UN Commission into the future of Palestine met, the rushed partition of India and Pakistan began, the Muslim Brotherhood was born in Egypt along with its-version of 'jihad', the Kalashnikov was created, George Orwell finished '1984', Christian Dior exhibited the 'New Look' in New York while protestors demonstrated, Simone de Beauvoir fell in love with Nelson Algren in Chicago. Some of the personal events are incredibly moving.

Fascinating, and sobering, snippets of history include Australia's abstention from the final recommendation to the UN on establishing two states in Israel/Palestine. The ill-fated voyage of the Exodus, where one western government after another refused entry to Jews fleeing Europe's holocaust immediately after the war is fairly well-known, and the subject of a major film. But I was completely unaware that fascist groups began organizing anew even as the war was ending with an Italian Fascist party setting up in 1946. So diligent were they that by 1950, less than 5 years after the defeat of fascism, a major international conference was openly held in Rome attended by newly reorganised groups from Sweden, the UK, Germany, France, Switzerland and so on. The conference goal was 'a new Europe'. They notified the US Department of Defense explaining their anti-communist objectives and received an official letter from the Pentagon wishing them success! They were planning how to re-present themselves politically, develop strategies and most pressingly arrange for some Nazis to either escape to South America or enter into new governing structures in Europe.

Although not everything that happened in 1947 is covered in the book (the IMF and the General Agreement on Tariffs and Trade (GATT) were set up) this is an intriguing account of a significant year and a wonderful book. As William Faulkner said 'The past is never dead. It's not even past'.

Film Review by Janet Burstall

Chappaquiddick



Whilst the first moon landing was about to happen, Senator Edward Kennedy drove his car off a bridge on Chappaquiddick Island, Massachusetts. Mary Jo Kopechne drowned and Kennedy escaped. Chappaquiddick, the movie, is set in the days before and the week after the accident. The accident that claimed a life might also claim Kennedy's ambivalent ambition of becoming

President, of even remaining a Senator, and possibly send him to jail.

Kennedy faces a series of chances to be honest, which would mean sacrificing his self-interest. He fails at the first, by waiting nine hours before reporting the accident. A police diver on the scene says that if he'd been there within 25 minutes he could have saved Kopechne's life.

Two characters advise Ted Kennedy in opposite directions. Joe, his cousin and advisor, is like a brother to him, all the more since the assassinations of his older brothers. Joe counsels public honesty. A couple of hours after the accident Ted calls his father to tell him he's in trouble. The Kennedy patriarch slurring, repeats one word, "alibi".

Ted Kennedy spends the next week struggling with the choices put to him from these two sides. He also yearns for the love and approval of his stroke-afflicted, and almost speechless father. Kennedy Senior is a powerful force despite his physical disabilities, assembling a team of advisors, lawyers and what we would now call 'spin doctors', to plan how to cover up Ted's failures and preserve his presidential prospects, on which the future of a political dynasty depended.

Herein lies a sort of modern day tragedy. Ted Kennedy, the youngest and last surviving son, is diminished as a man of integrity. Chappaquiddick is a movie about the ability of a man of wealth and influence to avoid some of the consequences of his actions, but not all the consequences.

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