I.C.C. Prosecutor Requests Warrants for Israeli and Hamas Leaders

0:01

from The New York Times I'm Sabrina tavernes and this is the [Music]

0:10

daily earlier this week the top prosecutor of the international criminal court requested arrest warrants for

0:17

Israel's prime minister and its defense minister the move shocked Israelis and

0:24

set up a possible showdown between the world's top criminal court and Israel together with its biggest allies

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the United States today my colleague Jerusalem

0:35

bureau chief Patrick Kingsley [Music]

0:44

explains it's Thursday May [Music]

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23rd so Patrick earlier this week there was a pretty surprising Announcement by the international criminal court in the

0:58

ha it had to do with Israel and Hamas tell us what happened well on Monday

1:04

morning we were all taken by surprise by an announcement from the chief

1:10

prosecutor at the ICC the international criminal court the top criminal court in

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the world it tries individuals accused of war crimes and the chief prosecutor

1:24

announced that he was requesting arrest warrants for five individual ual

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involved in the war between Israel and Hamas for crimes against humanity three

1:38

of them were from Hamas Yahya sinoa the head of Hamas within Gaza the Hamas

1:45

military commander and the political leader of Hamas who's based in Kat but

1:51

maybe the biggest news in this announcement was that the chief prosecutor was seeking the arrest of two

2:00

of Israel's top leaders Benjamin Netanyahu the Prime Minister and yav

2:05

Gallant the defense minister and this was a massive bombshell these two men

2:12

are leaders from a major US Ally their regular contact with the US government

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and they were being implicitly equated with the three top leaders of an organization Hamas that many consider a

2:27

terrorist organization and this sent shock waves through Israeli society

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and indeed around the world so this is absolutely remarkable Patrick I mean I

2:39

for one was quite surprised by seeing this I want to dig into it with you so who is this prosecutor Behind These

2:46

requests for these warrants and how did he reach this decision to go for them in the first place so the prosecutor's name

2:53

is kareim Khan and he is a British lawyer a British Barrister he is 54 he's

3:00

led a very impressive career he has spent years working on human rights

3:07

cases both defending people and also Prosecuting in such cases he was

3:13

involved in tribunals related to the wars surrounding the breakup of the

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former Yugoslavia Rwanda he investigated Islamic State crimes in Iraq and in 2021

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he is appointed Ed the top prosecutor at the IC and what are his responsibilities

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as top prosecutor well it's his job to travel the world and investigate allegations of

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Human Rights abuses war crimes crimes against humanity and in the process

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plays a key role in deciding who gets prosecuted at the international criminal

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court the ICC and the ICC prosecutor investigates and tries people who would

4:00

not be pursued by the judicial system within their countries of origin It

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steps in when it seems like the domestic authorities in any given country are not doing their job and last year he

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famously went after President Putin in Russia in connection with the war in

4:21

Ukraine so at what point did this prosecutor Kareem Khan turn his attention to Israel in Gaza well he

4:28

actually inherits an investig ation from his predecessor that's looking at Israel's conduct and also that of Hamas

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during a previous war in 2014 between the two sides but then that gets

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superseded on October 7th by the horrors that we saw that day committed by Hamas

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and then by the scale and damage caused by Israel's bombing campaign in its

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Counterattack and we begin to see not only revulsion and horror at what Hamas

5:02

had done in early October but also growing criticism and condemnation of

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what Israel and its Air Force did in its response you'll remember that earlier

5:15

this year the international court of justice a separate court also in the hag

5:21

began to address claims that Israel was and is committing a genocide in Gaza a

5:27

claim that Israel strongly denies right that was the case that South Africa brought we did an episode about that yes

5:33

exactly so as the world's attention focuses on this new conflict so does

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Kareem Khan's also today the international Criminal Court's Chief prosecutor Kareem Khan QC has wrapped up

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a visit to Israel and the occupied West Bank he called Khan has visited the region to investigate if war crimes were

5:54

committed on we start to see him arrive in Israel visiting some of the sites

6:00

that Hamas attacked last year talking to survivors talking to leaders reviewing

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security camera footage and so on um I've just come from the border of the

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ruer crossing and we could uh see Gaza at least we could see cranes that were

6:19

on the territory of Gaza and he also visited the RFA Crossing between Egypt

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and Gaza talks to Palestinians at the ministry of Justice in

6:30

the chief prosecutor of the world's highest court he goes to the Israeli occupied West Bank to rala where the

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Palestinian Authority is based building up evidence that led to this announcement on

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[Music] Monday today I'm filing applications for

6:51

warrants of arrest before pre-trial chamber one of the international criminal court and he makes this very

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dramatic announ ment in a video my office has diligently collected evidence and interviewed survivors and

7:05

eyewitnesses at the scene of at least six major attack locations flanked on

7:11

each side by two of his deputies I have reasonable grounds to believe that three

7:18

senior leaders of Hamas Yahya Sina Muhammad daif and Ishmael hania bear

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criminal responsibility for the following International crimes and the accusations

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that he makes against the three Hamas leaders focus on the violent actions

7:37

that Hamas took on October 7th extermination as a crime against

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humanity murder as a crime against humanity and he walked through a long list of charges

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stemming from the extraordinary violence during that attack The Taking of hostages as a war

7:56

crime rape and other acts of sexual ual violence during captivity and he says

8:02

there are reasonable grounds to believe that hostages taken from Israel have

8:08

been subject to sexual violence including rape while being held in

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captivity and he sites assessment of medical records video and documentary evidence as well as interviews with

8:20

victims and survivors and I repeat and underline my call for the immediate release of all

8:27

hostages taken from Israel and for their immediate safe return to their

8:32

families so this prosecutor sees the atrocities on October 7th and then what

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followed with Hamas taking the hostages abusing them as crimes against humanity

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that's what an amounted to in his view exactly and what about the charges against the Israelis these are slightly

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different Israeli Prime Minister Benjamin Netanyahu and Minister of Defense yuav

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Galant bear criminal responsibility for the following International crimes committed obviously

9:06

a lot of the outcry and horror at the war in Gaza has centered around Israel's

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air strikes that have killed tens of thousands of gazans but Kareem Khan

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focuses not on the military actions of Benjamin Netanyahu and yav Gallant his

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defense minister but on the accusation of starvation of civilians as a method

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of warfare starvation the idea that Israel has allegedly sought to restrict

9:41

and block a deliveries Food Supplies to Gaza with the intent to starve the

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civilian population there these individuals through a common plan have

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systematically deprived the civilian population of Gaza of objects

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indispensable to Human survival and that's primarily based on the fact that

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for the first two weeks of the war until October 21st or so Israel blocked all

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Aid entry to Gaza after Galant the defense minister one of these two

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Israelis whose arrests Mr Khan seeks said that he was imposing a total Siege

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on Gaza no food no fuel no electricity and while that total Siege

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was eased towards the end of October Khan also notes that there have been

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continuing restrictions on essential supplies like food and Medicine ever

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since that conduct took place alongside attacks that kill civilians the

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obstruction of Aid delivery by humanitarian organizations and attacks

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on Aid workers that forced many of those same humanitarian organiz ations to

11:00

either cease operations or limit their life-saving efforts in Gaza the

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implication is that the famine that he says is present in some areas of Gaza and imminent in other areas is in part

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the responsibility of Netanyahu and Gallant that starvation has caused and

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continues to cause deaths malnutrition dehydration and profound suffering among

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the population my office charges Netanyahu and Gant as

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co-perpetrators and as superiors in the commission of these alleged

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crimes why is the focus of these charges starvation I mean given that the air

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strikes as you say were in many ways really the focus of this war and and certainly the focus of the world's

11:51

attention on this war the civilian deaths from the military operation why starvation kareim Khan does not explain

11:59

what why he focuses on starvation rather than Israel's military tactics which he

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mentions only in passing but legal experts have said that it's easier to

12:11

prove that starvation was used as a method of warfare than it is to prove

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that there have been any specific crimes involved in any specific air strikes and

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that's because under the rules of war and international law it's not necessarily illegal in and of itself

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self to kill civilians during wartime if a military assesses with the help of

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military lawyers that the likely civilian death toll caused by that

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strike is proportional to the value of the military Target then that in many

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cases will be in accordance with the rules of War if a military can prove

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that sense of proportionality then it's actually quite hard to prove that there

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was any crime committed in the process so in other words military actions are

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often weighed quite carefully in the case of say a modern military like israels or the United States there are

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lawyers that look at these things it's not necessarily so easy to prove that

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something was disproportionate and should be considered a crime exactly

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whereas with the crime of Salvation legal experts say that it's potentially

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easier to prove that there was some wrongdoing there because yab galland the Israeli defense minister went on record

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in a public statement and he announced that there would be a total Siege on the

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territory of Gaza and that was followed by an action the action of closing off

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gaza's borders for the next two weeks and no Aid was allowed in during that

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time there were restrictions on electricity water fuel as well as food

14:02

and that's why legal experts think that Karim Khan has gone after Israel with

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the crime of starvation rather than focusing on their military operations

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but I suppose just thinking about our coverage Patrick and the conversations you and I have had famine and starvation

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and a civilian population in extreme distress trapped in a small piece of

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territory is also not a small thing right that is also something that makes sense that the court would be

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considering absolutely it's a huge thing people don't have to be hit by an air

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strike to be living through an absolutely catastrophic situation so these charges really seem

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to spell bad news for Israel and for these two Israeli leaders Netanyahu and

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Gant and it's remarkable because these are men who as you say are some of America's closest allies I mean they're

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you know at the Pentagon they're having meetings with President Biden and now

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the chief prosecutor of the ICC is saying that they are war criminals yes

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it is a very dramatic moment in the view of some people a turning point and certainly we can say that it is one of

15:15

the harshest rebukes of Israel's wartime conduct since October

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7th but within Israel there's been a very different reaction

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and it's not all bad news for Benjamin [Music]

15:43

Netanyahu we'll be right

15:49

back so Patrick what do Israelis make of this announcement within Israel the

15:54

reaction has been very different whether it's netanyahu's allies or his critics

16:00

there has been almost uniform outrage that the prosecutor for the ICC would

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make these accusations and it means that at a time

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of rising domestic criticism of prime minister Netanyahu across the political

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Spectrum with only a very few exceptions everyone has rally behind Netanyahu and

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Gallant despite the fact that Netanyahu is increasing recently unpopular and

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even within his own government there have been growing criticism of his wartime strategy for example just two

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days before the prosecutor's announcement one of the senior members of his own wartime cabinet Benny gance

16:47

issued Netanyahu with an ultimatum warning him that he would quit the government if he did not spell out a

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plan for a post-war guards there then suddenly

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the announcement comes from kareim Khan that Netanyahu and gallan are under

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investigation and Gans is one of the first to come out with a condemnation of

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Karim Khan and a defense of the Israeli government that is the clearest example of how even critics of Netanyahu have

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fallen in line circled the wagons and presented a united front this is really

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interesting so this action by the prosecutor has kind of had the effect of actually closing divisions that were

17:31

starting to appear in Israeli Society effectively bringing netanyahu's critics

17:36

kind of back into his camp or at least making it harder to criticize him exactly and Israelis in general feel

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that Israel has always been targeted unfairly held to a higher standard than

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many other countries and that this is once again another example of that

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another example of Israel being accused of things that other countries do but get away with and there have been

18:01

broadly three criticisms from the Israelis of the ICC prosecutor first the

18:08

Israeli claim is that the ICC prosecutor is making a horrible false equivalence

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between Hamas the terrorist organization and Israel a democratic State Hamas

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raided Israel and launched the bloodiest attack on Jews in in a single day

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since the Holocaust Israel in the eyes of Israelis is fighting a righteous

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response to protect their citizens and to win back the liberty of the hostages

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that were captured on October 7th TRS this guy is out to demonize Israel he's

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doing a h job and nyaho himself articulated some of the clearest

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versions of this argument when he went on American television creating false

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symmetry false facts uh and he's doing a grave Injustice to the international

19:04

court and he called K's decision sered an effort to demonize Israel and to hold

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it to far higher standards than any other country he said it would have been

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as if after 911 that's like saying in uh after 911 well I'm issuing arrest

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warrants for uh for George Bush but also for bin Laden arrest warrants had been

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issued for both both bin lad and George Bush or after in World War II well I'm

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issuing arrest Wars for FDR but also for Hitler it's a hit job uh it's not

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serious he's out to defame Israel and he's also pouring

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Gasol the second criticism from Israelis has been about process the IC was

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created about two decades ago by a treaty more than 120 countries have signed that treaty

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but Israel has not and Israel contends that the prosecutor doesn't have the

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authority therefore to go after Israeli political leaders Israelis also say that KH didn't

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spend enough time assessing whether Israel was itself investigating these allegations within its own Judicial

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System remember that the ICC is a court of blast Resort it's only supposed to intervene when a domestic judicial

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system is generally not making any effort to investigate an alleged crime

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and Israelis are saying that Khan didn't spend enough time investigating gallant

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and Netanyahu the ICC prosecutors have spent 10 years investigating alleged

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crimes committed during a previous war between Israel and Hamas but this decision has been issued within just a

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few months and Israelis are saying that KH jump the gum in that sense so the

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Israelis saying look we're trying to get to it but you just didn't give us enough time exactly and they've even said that

21:04

Khan's team was supposed to be coming this very weak to continue that conversation and assess whether Israel

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was genuinely looking into these allegations by itself and that they misled Israel by pretending that they

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would be making that assessment when in fact all along they were planning to request arrest warrants interesting so

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for Israeli officials they're seeing it as a kind of activist thing as opposed to to a neutral judicial decision that's

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their claim at least the prosecutor's office says that they have tried to sincerely engage with Israel on this

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issue but that it's become clear to them that Israel does not seriously investigate this kind of crime so you

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said there are three elements to this what's the last the third and last element is on the content of the claim

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itself Israel flatly denies that it is responsible for the humanitarian crisis

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in Gaza it even denies that there is a famine or that the situation is on the point of a famine it points out all the

22:05

ways in which it has worked to get much more Aid into Gaza since October

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including opening more Crossings allowing the US to create a pier on the

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on the shoreline of Gaza it's allowed some countries to airdrop Aid and

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certainly the amount of Aid that has gone in in recent months has dwarfed the amount that was going in in October and

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November and while it accepts that its soldiers have obstructed and at times

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even killed Aid workers it says that that obscures the fact that it

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coordinates every day in detail with Aid groups to facilitate thousands of Aid

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missions every month isn't Israel's argument that these shipments could also

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include things that could be very useful for Hamas the group that just killed 1200 of its citizens exactly no one's

23:01

disputing least of all Israel that Israeli officials are examining all the

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aid going into Gaza the dispute is about whether that's necessary Israel says it

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is it says that if it didn't check then some of these Aid convoys might be smuggling in weapons or material that

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could be used to fight Israel to kill Israeli civilians and that therefore Israel has no choice but to examine some

23:27

of these Goods going in again the counterargument is that Israel's checks are far more stringent than they need to

23:35

be and end up preventing the entry of everyday items that pose no military

23:41

threat okay so that's the Israeli perspective how does the United States see the prosecutor's request here I mean

23:47

the us obviously Israel's biggest Ally well the American president President Biden condemned it in no uncertain terms

23:55

he said the prosecutor's decision was outrageous and he condemned him for

24:01

drawing an implicit equivalence between Hamas and the leaders of the state of

24:07

Israel and why did Biden come out so strongly against the prosecutor I me we know that humanitarian Aid has been a

24:13

major concern for this Administration so why would Biden be so opposed to

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something that really is calling out Israel for this Aid first of all because Israel is a

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major Ally of the United States and the United States wants to show support for its Ally second of all they fear that

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this kind of criticism this kind of intervention will actually make Israel less rather than more likely to bring

24:42

the war to a Hal because the feeling is that it will make Israel more defensive and in turn banon down the hatches the

24:49

third reason is that the United States historically has never been a particular

24:55

fan of the international criminal court we mentioned earlier that Israel did not

25:01

sign the treaty that created the IC well the United States did not do that either

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and that's in part because American leaders fear that having an international Global Court undermines

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American sovereignty they think it's the role of the American judicial system to

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investigate American citizens and there is a fear that with the United States so

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active militarily in many parts of the world that membership of the Court

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involvement in the court could pave the way for American soldiers being tried

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for acting on behalf of the United States and that could somehow Dent

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American foreign policy goals across the world okay so the United States doesn't really like this court you know has

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troops in a lot of places doesn't want a court swooping in and Prosecuting them when something goes wrong but I guess

25:58

the question then in my mind Patrick is does what this prosecutor is doing

26:05

matter I mean America is not a signatory Israel is not a signatory

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so why is this important well for the time being its meaning is more symbolic

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than anything else first Karem Khan has not issued an arrest warrant he has

26:22

requested an arrest warrant for these five people and three judges will now spend weeks and possibly months deciding

26:29

whether to uphold those requests that process can be less than a month uh in

26:35

the case of Vladimir Putin it was just shy of a month president Basher of Sudan

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was issued with a warrant the process took roughly a year when and if they do

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do that however there will be practical effects if an arrest warrant is issued

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it means that any country that's a member of the international criminal court Court in theory should arrest any

27:01

of these individuals if they enter their territory that includes more than 120

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countries all over the world much of Europe Latin America Africa and so on

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yes it's true that the United States and Israel are not signatories and neither are turkey or qat to the countries where

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Hamas officials spend much of their time when they're outside Gaza so there will

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still be places for officials on either side of these accusations to travel to but

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there are lots of other countries like France Italy both places where Benjamin

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Netanyahu traveled in the past year where in theory they will not be able to

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set foot so the negotiations over the war can still continue but if Netanyahu

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travels to France or to Italy he could be arrested which is pretty wild yes at

27:56

least that's the theory the national prorities in any given country still have to make a choice about whether they

28:01

want to follow through with it but would those countries perhaps not arrest him out of deference to the United States I

28:08

think the expectation is that if we got into this scenario then someone like nanahu simply just wouldn't travel to

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such a country but the truth is we just don't really know we are entering uncharted waters so this is really

28:23

isolating Netanyahu in the world should it go forward yes isolating Netanyahu and and to some

28:31

extent Israel itself and it has not just practical implications for the the

28:37

physical movement of Netanyahu and his defense minister Gallant but it also compounds Israel's relationship with

28:45

foreign allies it complicates Israel's ability to arm itself more countries May

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grow more unwilling to sell Israel arms or at least they'll face growing pressure because of this decision not to

28:57

do so and it also could force the country to become ever more reliant on

29:04

the United States as it comes more of a pariah over its actions in Gaza which of

29:11

course puts the United States in an even trickier position with an ally who's been pretty hard to be friends with of

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late right and in truth while the Practical consequences of this move are

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still unknown they do in General compound the sense that Israel is facing

29:32

more and more diplomatic consequences for its actions more than a

29:37

decade ago a former Israeli Prime Minister warned that Israel would face what he called a diplomatic tsunami if

29:46

its conflict with the Palestinians went unresolved and it's possible that years

29:54

later we're starting to finally see what he meant Israel does still have its supporters

30:01

many of them but we're also now seeing during this war a level of criticism

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that goes above and beyond the kind that we've grown used to seeing directed at

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Israel over the years in addition to the warrant requests we've seen this week we've

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obviously had an extraordinary wave of protests on American campuses and

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elsewhere in the world and earlier this year we had a watershed moment when the

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international court of justice began hearing accusations of genocide against

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Israel and this week several European countries recognize Palestine as a state

30:47

wow so if the tsunami hasn't yet arrived we can at least say that the waves are

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getting stronger

31:04

Patrick thank you thank

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you on Wednesday the leaders of Spain Norway and Ireland announced that they

31:16

would recognize an independent Palestinian State the move was largely symbolic but raised the concern that if

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neighboring countries followed their lead Europe could be become a counterweight to the American position

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that statehood for Palestinians should come only from a negotiated settlement with

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Israel we'll be right

31:49

back here's what else you should know today Nikki Haley the former United Nations Ambassador who dropped her

31:56

Republican Presidential in March said on Wednesday that she would vote for Donald

32:01

Trump but stopped short of officially endorsing him Haley was Trump's longest

32:07

standing rival in the 2024 primary contest and had carved out an important Lane for herself as the voice for voters

32:15

looking for an alternative to the former president her decision on whether to endorse him could play a pivotal role in

32:22

the race Haley has built a formidable network of high dollar donors and a solid of college educated voters that

32:29

Trump needs to win and the city of yaldi Texas has reached a settlement with most

32:36

of the families of children who were shot by a gunman at Rob Elementary School in 2022 to avert a lawsuit the

32:44

city promised to overhaul the city's police force create a permanent Memorial to the victims and pay $2

32:52

million today's episode was produced by Will Reed and Diana win with help from

32:58

Shannon Lynn it was edited by Liz oalen with help from Michael benois contains

33:05

original music by Alicia beu Maran Lozano and Pat mccusker and was

33:10

engineered by Alysa Moxley our theme music is by Jim brunberg and Ben Lanser of

33:16

wonderly that's it for the daily I'm Sabrina tavernes see you tomorrow

33:23

[Music]