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USA Sanctions against ICC Officials

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Why in News

The **USA announced sanctions**, including **asset freezes and visa bans**, against two officials of the **International Criminal Court (ICC)** for their investigation into alleged war crimes by the USA forces and the Central Intelligence Agency (CIA) in Afghanistan since 2003.

Key Points

- **The USA's Stand:** Not only sanctions against officials, earlier the USA criticized the ICC.
 - The USA has considered the ICC a **threat to USA sovereignty**, and announced the strict punitive measures that are generally reserved for use against terror groups and those accused of abusing human rights.
 - USA had **never ratified the "Rome Statute"**, which created the ICC in 1998, and thus is **not subject to its rulings**.
 - The USA administration also called ICC a thoroughly **broken and corrupted institution**.
- **ICC's Stand on USA Sanctions:** An unacceptable attempt to interfere with the rule of law and the Court's judicial proceedings.
 - It stands firmly by its staff and officials and remains unwavering in its commitment to discharging, independently and impartially, the mandate laid down in its founding treaty, the Rome Statute.

- **Criticism of the USA' Sanctions:**
 - The USA decision has been criticised by the **United Nations**, the **European Union**, 10 members of the **UN Security Council**, including the UK and France, as well as several international human rights agencies, all of which have called for the **sanctions to be reversed**.
 - The international NGO Human Rights Watch has observed that by penalising war crimes investigators, the **USA is openly siding with those who commit and cover up human rights abuses**.
 - The USA action is a **setback to the international rules-based multilateral order**.
 - The decision to sanction anybody assisting the ICC will **deter victims of violence in Afghanistan from speaking out**.
 - The USA's unilateral sanctions would **encourage other regimes accused of war crimes** to flout the ICC's rulings.

International Criminal Court

- The **International Criminal Court (ICC)** is an **intergovernmental organization** and **international tribunal** that sits in **The Hague** in the **Netherlands**.
- It was set up after the ad hoc tribunals to deal with Rwanda war crimes proved ineffective. ICC is a **criminal court**.
- The ICC has the **jurisdiction** to prosecute individuals for the international crimes of genocide, crimes against humanity, and war crimes.
- ICC is **based on the principle of complementarity**. ICC was not created to supplant the authority of national courts. However, when a state's legal system collapses or when a government is a perpetrator of heinous crimes, the ICC can exercise jurisdiction. ICC is a court of last resort.
- The ICC began functioning on **1st July 2002**, the date that the **Rome Statute** entered into force.
 - The Rome Statute is a **multilateral treaty** which serves as the ICC's foundational and governing document.
 - States which become party to the Rome Statute, for example by ratifying it, become member states of the ICC.
 - The Rome Statute has been signed by 139 countries, and 123 have ratified it through their Parliaments and internal process.
- **USA and the ICC:** Although the USA was part of the founding movement to build the ICC to try cases of genocide and war crime, especially after the courts in Rwanda failed, it decided not to ratify the Statute in 2002.
 - USA opposed the ICC due to apprehensions that it will be used politically against its nationals.

- Countries like **Russia, China and India were never in favour of the Rome Statute** or the ICC, and never signed on.

India and ICC

- India is **not a party to ICC**.
- For India, the decision was based on a number of **principles**. The **major objections** of India to the Rome Statute are:
 - The ICC is a criminal court, unlike the **International Court of Justice** (which adjudicates on civil matters), and arrogates to itself the right to prosecute matters against countries that aren't even signatories.
 - Since ICC is subordinate to the **UN Security Council (UNSC)**, permanent members are vested with unbridled powers.
 - India also **objected to the omission of cross-border terror**, use of nuclear arms and weapons of mass destruction from the areas the ICC would institute its investigations.

Way Forward

- While the USA's concerns about the ICC are shared by India and other countries that weren't signatories, the USA action is seen as another blow to multilateralism.
- In the last few years, the USA administration has walked out of several UN agencies and international agreements, including the Human Rights Council, **UNESCO**, the **Paris climate change agreement** and the Iran nuclear accord.
- Particularly at a time the USA accuses China of disregarding international norms in the South China Sea and other areas, and of human rights violations in Xinjiang and Tibet, the USA's pushback over the ICC's case in Afghanistan seems counterproductive.
- The **independence of the ICC** and its ability to operate without interference must be guaranteed so that it can decide matters without any influence or pressures. Further, there is a need for an independent expert review of its own functioning.

Source: TH