On October 9, 2014 Judge Sang-Hyun Song, the President of the International Criminal Court, presented a lecture entitled “Preventive Potential of the International Criminal Court” as part of the Foreign Policy Distinguished Speaker Series. The event was organized in collaboration with Cornell’s Law School.

After an introduction from David Lee, Provost's Fellow for Internationalization, Song presented the theme of his talk - the preventative potential of the ICC and the key role of courts in the deterrence of genocide, use of child soldiers, and other human rights violations. Song’s personal experience with humanitarian disasters began at the age of 9 during the Korean War when he was forced to live in a bunker and walk 10 miles a day past dead bodies to find food and water for his family. Since then he has visited many communities impacted by atrocities in countries such as Uganda and the Democratic Republic of Congo.

These encounters stirred memories of his traumatic childhood experiences, and urged him to figure out a way to stop this “brutality and madness.” Song firmly believes that human society can change and the world can improve for the better, but it is not easy work and requires struggle
and sacrifice. “Progress does not occur overnight. Obstacles must be removed bit by bit and it’s a long process,” Song said. Although historical breakthroughs are few and far between, Song thinks that the establishment of the ICC in 1998 was significant.

Simply establishing the court did not mean an end to the challenges faced in implementing a binding international system of justice, but Song feels that it’s safe to say that the ICC is here to stay. Although important players like the United States, Russia, and China have still not joined the Rome Statute, they acknowledge that the court plays an important role in international jurisprudence. What makes the ICC different from ad hoc courts is that it isn’t dealing only with past events, but is also part of the international rule of law and most importantly can play a preventative role.

Song went on to discuss four broad ways in which the ICC offers preventative measures. First, the ICC prevents atrocities through deterrence. Although this is difficult to measure and evidence is largely anecdotal, the very existence of the ICC indicates that there will be consequences to the commission of crimes against humanity. Second, the ICC is able to offer timely intervention. By reacting to threats of crime at an early stage, the ICC is able to open investigations and provide observers who are a powerful tool for accountability. Third, the ICC is able to provide stabilization. With a particular emphasis on protecting women and children, the ICC represents a step away from a male-dominated world. Through the establishment of trust funds, the ICC offers the possibility of reparations to victims. Lastly, the ICC plays a role in what Song called “norm setting.” The ICC is not only a layer of international laws, but a strong system of moral and legal norms that can act as a catalyst for changing the norms in societies around the world. Song saw this last preventative function as an ambitious goal that will take a long time to achieve. With the proper national implementation and political will, however, he thinks the goal is attainable.

After addressing the preventative role of the ICC, Song also identified a number of challenges faced by the court. First, the ICC would be more effective as an international body if it could rely upon stronger national jurisdictions as the primary deterrent. The ICC is an international safety net, but national jurisdictions could serve as a stronger, more substantive system with greater resources at its disposal. Second, the ICC would be stronger if it got more cooperation from states. The ICC has no police force of its own and relies upon member states for their backing, without which it is powerless. Third, the ICC needs to achieve universality. At present 122 states have accepted the Rome Statute, but more than 70 have not. The majority of the human race is outside of ICC protection, and the Asia Pacific region in particular is largely under-represented.

To summarize, Song said that the ICC was only one piece in protecting human rights. Multiple mechanisms are necessary, and political solutions are vital. Long term prevention will require sustainable growth in education, democracy, and economic development. He sees the preventative role of the ICC as an important part of promoting growth in these areas. “The long term value of the ICC lies not only in punishment of perpetrators but in the prevention of future crimes,” Song concluded.

The Foreign Policy Distinguished Speaker Series features prominent leaders in international affairs who can address topical issues from a variety of perspectives. The Speaker Series is part of the Foreign Policy Forum at Cornell University led by the Einaudi Center to maximize the intellectual impact of Cornell’s outstanding resources in this area.