7. Recommendations and Policy Options for the South Asian Region

'We need to tailor concepts and procedures of our own, suited to our own traditions and needs'.
Judge CG Weeramantry[842]

From a historical perspective, second-tier patent protection is a policy response to perceived deficiencies in patent and design regimes.[843] In many jurisdictions, utility models or petty patents provide protection for minor and incremental innovations such as devices, tools and implementations particularly in the mechanical, optical, and electronic fields.[844] Such a system should, in principle, encourage greater innovation in developing countries as they provide legal protection for simple technological advances that do not qualify for fully-fledged patents because they fail to satisfy rigorous patentability criteria.[845] Perhaps more importantly, the empirical evidence from East Asian countries, especially from South Korea, indicates that a UM regime can help domestic firms in developing countries develop their technological capacity.[846] Despite the fact that South Asian economies rank low on global innovation and technology indicators, no country in the South Asian region has ever had a UM or petty patent regime in its IP law landscape. Interestingly, today there is a rising tide of opinion in the region in favour of the introduction of an STP regime in or-

842 CG Weeramantry, 'Lawyers as Social Engineers' (2004) 5/2 Bar Association Law Journal of Sri Lanka 7, 7.

843 G Dutfield and U Suthersanen, *Global Intellectual Property Law* (Edward Elgar 2008) 13-15.

844 YK Kim and others, 'Appropriate Intellectual Property Protection and Economic Growth in Countries at Different levels of Development' (2012) 1/4 Research Policy 358, 360, available at: <http://www.sciencedirect.com/science/article/pii/S0048733311001715> (accessed 2 June 2012).

845 W Weeraworawit, 'Utility Models in Thailand' in C Heath and A Kamperman-Sanders (eds) *Industrial property in the Bio-Medical Age: Challenges for Asia* (Kluwer Law 2003) 269, 269.

846 YK Kim and others, 'Appropriate Intellectual Property Protection and Economic Growth in Countries at Different levels of Development' (2012) 1/4 Research Policy 358, 368, available at: <http://www.sciencedirect.com/science/article/pii/S0048733311001715> (accessed 2 June 2012).

der to incentivise more incremental innovations among domestic firms, especially SMEs. Apparently, at least, Indian and Pakistani policymakers seem to have understood that certain technological improvements that are new but obvious, can still provide their inventors with a competitive advantage crucial for business and economic success. Even though a UM regime is currently under consideration in both India and Pakistan, designing a balanced, effective and inexpensive regime is a daunting task, and any such system should be adopted only after giving careful consideration to all relevant substantive and practical issues associated with an STP regime.

As noted before, even though India is more scientifically advanced than other South Asian countries, the economies in the South Asian region are generally less technologically advanced when compared with East Asian countries. Countries in the region need to develop indigenous technological capacities in order to achieve and sustain robust economic growth. With the advent of the information revolution, skills and knowledge have become the primary sources of sustainable long-term competitive advantage.[847] Thus, South Asian economies should craft their policies in a manner intended to shift the economy away from reliance on raw material exports and toward value adding and knowledge creating activities. Policies of the governments should be directed towards creating an innovation-friendly climate aimed at reaping the rewards of innovation. Of course, one could reasonably doubt whether the South Asian region suffers from an innovation policy deficit. The decisive question is whether countries in the South Asian region have created the appropriate type of protection mechanisms for the kind of innovation that emanates from their knowledge driven sectors. From a policy perspective, as one critic has elegantly summarized, confining IP rights to rather major and unanticipated solutions could be compared to depriving property rights to holders of small plots of land while granting such rights to big landowners.[848] Arguably, given that the majority of SMEs and grassroot innovators work at low technological levels, depriving such innovators of legal protection is contrary to both the basic rationale of the IP system and the principle of equi-

847 LC Thurow, 'Needed: A New System of Intellectual Property Rights' (1997) September-October, Harvard Business Review 95, 95.

848 NAO Boztosun, 'Exploring the Utility Models for Fostering Innovation' (2010) 15 Journal of Intellectual Property Rights 429, 436.

ty which may also constitute discrimination.[849] Nevertheless, it might still be argued that such innovation does not deserve protection at all. The crucial question is whether leaving less technologically advanced innovations unprotected would benefit the innovation landscape of a developing country in the South Asian region. As noted in previous chapters, the empirical evidence from South Asian countries does not support the view that non-protection of incremental innovation leads to increased innovation and to advances in the technological capacity of the countries, with the exception of certain sectors in India such as IT and pharmaceuticals.

7.1. Policy Options

For more than a century, the world's wealthiest human being was associated with oil, starting with John D Rockefeller in the 19th century and ending with the Sultan of Brunei in the late 20th century. But today, the world's wealthiest person is a knowledge worker.[850] Therefore, it is a priority need for Sri Lanka and other South Asian countries to move away from labour-intensive industrial sectors towards more knowledge-intensive sectors in order to achieve and sustain high economic growth. The policy space retained by individual countries under multinational IP instruments such as the TRIPS Agreement allows individual countries such as Sri Lanka to design an STP regime tailored to the needs of the country's industrial structure. In other words, all options are available for structuring a suitable STP regime for incentivising indigenous innovations. As postulated by Cornish, 'intellectual property may be extended to new subject-matter either by accretion or by emulation. Accretion involves redefining of an existing right so as to encompass the novel material; emulation requires the creation of a new and distinct right'.[851] Accordingly, commentators have pointed out, three main options that policymakers in a developing country can consider:[852]

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849 Ibid.

850 LC Thurow, 'Needed: A New System of Intellectual Property Rights' (1997) September-October, Harvard Business Review 95, 95.

851 WR Cornish, 'The International Relations of Intellectual Property' (1993) 52/1 Cambridge Law Journal 46, 46-48.

852 U Suthersanen, G Dutfield and KB Chow (eds), *Innovation Without Patents: Harnessing the Creative Spirit in a Diverse World* (Edward Elgar 2007) 69.

- *Status quo approach*; A developing country can accept the existing intellectual property regime, without introducing any new right.
- *Accretion approach*; A developing country can adjust the existing intellectual property regime without introducing a utility model right. This can be done by extending existing intellectual property rights to new subject matter.
- *Emulation approach*; Emulation involves creating new hybrid rights.

In essence, South Asian countries need to decide whether they should

- leave sub-patentable invention unprotected,
- lower the inventive step requirement under the standard patent law in order to accommodate minor and incremental invention, or
- create an alternative protection regime such as that of a UM or a petty patent regime.[853]

Viewed through the lens of innovation activities, almost without exception, all eight countries in the region are IP importing nations. The existing patent regime simply does not provide a suitable means of protecting the type of innovation that emanates from the SME sector in this region. The majority of innovation involves simple technology and lacks a high degree of novelty and inventive step. Thus, there is a need to accord a simple, fast and affordable protection mechanism to incentivise incremental innovation as a stepping stone to further innovation. From a different perspective, there is another reason for not following the 'accretion principle'. If a country were to choose to adopt a lower/diminished inventive step requirement for patent law to accommodate minor technological advances, it could arguably lead to a diluting or polluting effect on the higher quality level of standard patents. A UM or petty patent system does not pose this threat as it provides short term protection for a low-level simple innovation with lower requirements of protection and caters to a different class of users. In the light of the above, South Asian policymakers are likely to decide in favour of the emulation option. Nevertheless, they still need to assess the strengths and limitations of such a regime. As a caveat, it should be born in mind that the emulation option is inherently risky in the sense that new rights are essentially experimental.[854] As Machlup has pointed out, unless compelling evidence suggests that introducing a new system of protection actually does more benefit than harm, one is better off by re-

853 Ibid 64.

854 G Dutfield and U Suthersanen, *Global Intellectual Property Law* (Edward Elgar 2008) 13.

taining the status quo.[855] Thus, policymakers in the South Asian region should carefully examine whether the potential social costs of introducing a new UM right exceed the perceived benefit. Most importantly, the lessons emerging from East Asia may provide useful insights for the South Asia region in this regard.

7.1.1. Sri Lanka

Since its independence, Sri Lanka has not been able to make significant strides in terms of innovation and technological progress in the past six decades. According to critics, Sri Lanka's weak performance regarding innovation is a symptom of the low priority given to science and technology and research and development.[856] Policymakers have aptly observed that under-development in the field of science and technology has been one of the reasons for the country's economic backwardness.[857] Today, Sri Lanka embarks on a voyage of economic development after the end of an almost three-decade-long civil war in 2009. It is apparent from the recent policy documents that the Sri Lankan government has acknowledged that it needs to change the direction of its science and technology policies in order to encourage domestic innovation and value creation for economic development.[858] Moreover, the policy agenda of the government clearly spells out

855 F Machlup, *An Economic Review of the Patent System* (1958) Study No. 15 of the Subcommittee on Patent, Trademarks and Copyrights of the Senate Committee on the Judiciary 79-80. HG Ruse-Khan, 'Utility Model Protection in Pakistan-A Feasible Option for Incentivising Incremental Innovation?' (2012), Study conducted for the World Intellectual Property Organisation 81 (copy on file with author).

856 A Wijesinha, 'Igniting a new fire: Why innovation must be Sri Lanka's new priority' *Daily FT* (Colombo, 12 March 2013), available at: <http://www.ft.lk/2013/03/12/igniting-a-new-fire-why-innovation-must-be-sri-lankas-new-priority/> (accessed 25 March 2013).

857 Government of Sri Lanka, *Mahinda Chintana-Towards a new Sri Lanka – Policy Document* (Department of National Planning: Ministry of Finance and Planning 2005) 67, available at: <http://www.treasury.gov.lk/publications/mahindaChintanaVision-2010full-eng.pdf> (accessed 25 March 2013).

858 In 2008, the government had observed that previous governments had not considered investment in science and technology as a priority. The investment in R&D has remained around 0.15 percent of GDP for the past several years. See National Science and Technology Commission (NASTEC)-Ministry of Science and Tech-

the government's determination to present the country as a knowledge hub in Asia.[859] Against this background, it is worth considering the introduction of an STP system to incentivise minor and incremental innovations which would reinforce the above policy objectives in Sri Lanka.

Sri Lanka has a good chance of reaping the benefits of innovation if it designs IP policies suited to the specific needs of the country. As noted above, in the event that Sri Lanka decides to introduce an STP regime, it may need to adopt the emulation approach. Since Sri Lankan has followed the practice of codifying all IP categories under the same IP Act, the introduction of a UM or petty patent right can easily be done by amending the current IP Act. Nevertheless, there should be a very clear line of demarcation between patentable inventions and innovation protected by an STP regime in order to avoid any confusions and misunderstandings. According to the Action Plan 2007 to 2016 of the National IP Office of Sri Lanka, the IP office is responsible for proposing policies on IP rights. This includes revising the existing IP regime and introducing improvements.[860] This document provides the necessary platform for the amendment of IP Law in order to introduce a petty patent or utility model system in Sri Lanka. It is argued that the introduction of a separate layer of protection for technologically less advanced innovation would make IP protection more accessible to a broader spectrum of users such as SMEs. As emerging economic literature indicates, Sri Lanka has a great chance to become a 'breakout nation'. A breakout nation is a country that beats expectations or a nation that is able to grow faster than other countries in the same per capita bracket.[861] Nevertheless, critics have warned that Sri Lanka might fall into the Middle-Income Trap if it does not achieve a high economic

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nology, *National Science and Technology Policy-2008* (Government of Sri Lanka 2008) 5.

859 Department of National Planning-Ministry of Finance and Planning of Sri Lanka, *Mahinda Chintana-Vision for the future* (2010) 68, available at : <http://www.treasury.gov.lk/publications/mahindaChintanaVision-2010full-eng.pdf> (accessed 10 June 2011).

860 National Intellectual Property Office of Sri Lanka (NIPO), *Action Plan 2007-2016* (2007) NIPO 2-4. (file with the authorities).

861 R Sharma, *Breakout Nations: In Pursuit of the Next Economic Miracles* (Allen Lane 2012) 193. Sharma states: "The civil war is over, the process of healing is under way, and there is every chance that Sri Lanka will again become a breakout nation. Despite slowing sharply during the war years, the economy continued to grow at an average pace of nearly 5 percent".

growth rate.[862] In order to avoid the Middle-Income Trap, Sri Lanka needs to promote innovation at all levels and to develop a culture of innovation. For decades, Sri Lanka has suffered from low R&D spending, insufficient incentives to promote innovation, insufficient technology transfer from abroad and lack of clear policy for the promotion of industries in the country, especially for the SME sector. Specifically, Sri Lanka should provide sufficient incentives for all types of innovation to achieve sustained dynamic growth rather than turning to 'low-hanging fruits' such as tourism, exporting raw materials, sending low-skilled labour to the Middle East and far East countries though this may yield short term benefits for the nation.[863] Most importantly, Sri Lanka should have a clear innovation policy in order to guide an innovative nation.

7.1.2. India and Pakistan

The recent initiatives of the Indian and Pakistani policymakers have paved the way for wider discussion of adopting a UM system to promote incremental and creeping innovations in the region. Perhaps even more importantly, the Discussion Paper of the Indian government has generated much attention for a long felt need of providing effective legal protection for minor innovations in the region. Similarly, the Pakistani government has taken steps to draft a Utility Model Bill. Both countries have taken the emula-

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862 The 'Middle-Income Trap' refers to a situation where countries can get stuck at a level of development in which its populace has been generally lifted out of poverty but has not been elevated to the income levels of more advanced economies. That happens because it is easier to jump from a very poor country to a middle-income nation than it is to advance from that of middle-income status to the ranks of the truly developed. See M Schuman, 'Can China Escape the Middle-Income Trap?' *Times* (New York, 12 March 2013), available at: <http://business.time.com/2013/03/12/can-china-escape-the-middle-income-trap/> (accessed 2 April 2013). WA Wijewardena, 'Will Sri Lanka be snared in a Lower Middle Income Trap before it reaches the Middle Income Trap Proper' *Daily FT* (Colombo, 23 January 2012), available at: <http://www.ft.lk/2012/01/23/will-sri-lanka-be-snared-in-a-lower-middle-income-trap-before-it-reaches-the-middle-income-trap-proper/> (accessed 24 January 2012).

863 A Wijesinha, 'Igniting a new fire: Why innovation must be Sri Lanka's new priority' *Daily FT* (Colombo, 12 March 2013, available at: <http://www.ft.lk/2013/03/12/igniting-a-new-fire-why-innovation-must-be-sri-lankas-new-priority/> (accessed 25 March 2013).

tion approach in order to create a new IP right, without diluting the high standard of the patent regime. Unlike Sri Lanka, these two countries are accustomed to the practice of enacting separate legislation for each type of IP. Therefore, enacting a separate piece of legislation for an STP system seems to be the most likely option for both countries. Given the high degree of innovation at the grassroot level and the type of innovation created by SMEs, the introduction of a new IP regime may provide a low-cost entry point for a broader spectrum of innovators in these countries. From an innovation policy perspective, such a regime may be necessary to assist the industrial sector and in particular the SMEs.

7.1.3. Other South Asian Countries

Other South Asian countries such as Afghanistan, Bangladesh, Nepal, and Bhutan belong to low income economies. Innovation in these countries appears still very low and these countries need to move up the technology and innovation ladder. According to UNIDO Industrial Development Report 2009 (as discussed in Chapter 5) economies in the South Asian region have not performed well on the global Competitive Industrial Performance (CIP) index. Obviously, South Asia has one of the least sophisticated export structures in the world.[864] It is time for these countries to look beyond the low-end operation in fashion cluster (textiles, cloths, shoes, leather, etc.).[865] In view of the experience from India and Pakistan, other developing countries in the region should consider creating a legal mechanism to encourage more domestic innovation in the industrial landscape. Although an IP regime is only one of the factors that contributes to the promotion of innovation in a country, the experience from East Asia shows that an STP regime can significantly contribute as a vehicle for technological learning by domestic industrial sectors. The designing of a balanced, effective, and inexpensive STP regime may be a major challenge for all these countries even though there is unfettered policy space remaining for tailoring a regime suited to the specific needs of an individual country.

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864 United Nations Industrial Development Organization (UNIDO), *Industrial Development Report -2009* (UNIDO 2009) 120.

865 Ibid.

7.2. General Recommendations and Observations

It may be for historical reasons that an STP regime has not received the consideration it deserves from the South Asian governments. It is therefore desirable to revisit the existing IP laws and policies. At the policy level, the successful experiences of other jurisdictions such as Germany, Australia, China, Malaysia, as well as Kenya may serve as 'best practices' that could be emulated in structuring an appropriate UM or petty patent regime. In the design of any future legislation on STP, the South Asian policymakers should possibly include the following features:[866]

- *Subject matter of protection*: the scope of protection should not be restricted to mechanical devices, but should be narrower than the subject-matter covered under the patent law. There should be a list of excluded subject-matter such as software and pharmaceuticals because such innovation may, in particular, need a substantive examination in order to prevent the abuse of the system. However, TK-based innovation may be included for protection according to the interest and needs of the country.
- *Novelty standard*: novelty should be either relative or domestic in order to advance the interests of domestic innovators and SMEs.
- *Inventiveness threshold*: the level of inventiveness should either be abandoned or be much lower than that of patents. In principle, any innovation that represents a practical or functional advantage over prior art should be protected in order to accommodate adaptive innovations.
- *Substantive examination*: UM or petty patent applications should not undergo any substantive examination prior to grant. A cursory or preliminary examination is recommended.
- *Term of Protection*: the statutory life of the right should not exceed a maximum of eight years as a shorter term can be justified by a lower standard of protection. Moreover, the shorter term would also reduce the possibility of abuses
- *The STP regime should be attractive and user-friendly*: in order to make the new right appeal to domestic industries, it should be a less expensive, quickly granted and a more easily obtainable right.

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866 U Suthersanen, 'Utility Models and Innovation in Developing Countries' (2006) ICTSD Issue Paper No.13, 38-39, available at: <http://unctad.org/en/docs/iteipc20066en.pdf> (accessed 15 March 2012).

– *Enforcement-related safeguards against abuses*: the risk of abuse could be addressed by in-built check and balance mechanisms. Procedures for invalidation and requiring the production of an evaluation report before enforcing the right may be used to discourage abusive behaviours.
– *Provisions for statutory and compulsory licensing*.
– *Government action to enhance awareness and the use of UM protection*

As noted above, most importantly, the particular features of an STP regime should respond to the objectives and goals of the country concerned. A country needs to examine and evaluate the potential impact of an STP regime on its innovation landscape before introducing such a regime. Without having such a clear understanding of the possible downsides of such a regime, no country can design a system that suits their domestic needs. Moreover, there have been and are concerns regarding possible abuse of the system by large firms. As argued by Fink and Maskus, 'although the existing economic literature on IPRs provides some useful guidance to policymakers in developing countries, there is still a lot we do not know'.[867] Thus countries should carefully assess whether the economic benefit of STP protection outweighs the costs. South Asian nations need to take into account the cost of administering and enforcing the additional layer of protection.[868] Most importantly, the benefit of an STP regime in any country would depend on the specific design of the legislation. In other words, any UM or petty patent system should focus on the needs and interests of the target group, in this case the SMEs.

In addition to introducing an STP regime, South Asian countries should focus their attention on developing the technological capacity of domestic firms to effectively absorb and adapt technologies developed abroad. Most importantly, there is no guarantee that any UM or petty patent would increase minor and incremental innovations unless a country provides the other necessary conditions for innovation to happen viz. appropriate institutions, education and IP awareness. Moreover, the literature on the transfer of technology, based on historical and empirical evidence from East Asia, suggests that a strong IPR protection will hinder rather than facilitate

867 C Fink and KE Maskus (eds), *Intellectual Property and Development: Lessons from Recent Economic Research* (World Bank and Oxford University Press 2005) 13.
868 Ibid.

technology transfer and indigenous learning activities in the early stage of industrialisation.[869] These studies find that it is only after countries have accumulated sufficient domestic capabilities with extensive science and technology infrastructure to undertake creative imitation in the later stage that IPR protection becomes an important element in technology transfer and industrial activities.[870] Even more interestingly, if one takes China as a major success story of the past decade, it has achieved an explosive economic growth in the face of intensive criticism of its IP regime.[871] The Chinese experience suggests that intellectual property protection is not as central a driver of innovation and technological development as is claimed.[872] More often, authors who are too convinced of IP commit the 'mono-causal fallacy'. They argue that in the case of countries that have recently experienced an 'innovation hype' following the introduction of higher standards of IP protection have done so due to their IP policies.[873] This line of argument, however, forgets that IP is just one reason for technological development, and may be not the most decisive one. For in-

869 YK Kim and others, 'Appropriate Intellectual Property Protection and Economic Growth in Countries at Different levels of Development' (2012) 1/4 Research Policy 358, 360, available at: <http://www.sciencedirect.com/science/article/pii/S0048733311001715> (accessed 2 June 2012). L Kim, *Technology Transfer and Intellectual property rights: The Korean Experience* (2003) ICTSD-UNCTAD Issue Paper No.2, 5.

870 Ibid.

871 See, F Abbott, 'Towards New Era of Objective Assessment in the Field of TRIPS and Variable Geometry for the Preservation of Multilateralism' (2005) 8/1 Journal of International Economic Law 77, 81. China is a paradigm case. It has pursued a policy of technology appropriation much like those pursued earlier by Japan, Taiwan and Korea, and has enjoyed explosive economic growth and development. Only a revisionist might attempt to correlate China's rapid economic growth to the introduction of strong IP protection. On the contrary, China has been under constant attack by the United States and EU for its IP protection failings.

872 G Dutfield and U Suthersanen, 'Harmonisation or Differentiation in Intellectual Property Protection? Lessons from History' (2005) 23/2 Prometheus 131, 132.

873 Yet, Yang and Maskus argue that stronger IPR would enhance technology transfer through licensing and reduce South firms' marginal production cost, thereby increasing its exports. See L Young and KE Maskus, 'Intellectual Property Rights, Technology Transfer and Exports in Developing Countries' (2008) CESINFO Working Paper No. 2464, Trade Policy. See, Y Chen and T Puttitanun, 'Intellectual Property Rights and Innovation in Developing Counties' (2005) 78 Journal of Development Economics 474, 489.

stance, firms from the US and Europe were willing to transfer a lot of technology to China in recent years although there are serious problems concerning IP enforcement. For them, it was more important to benefit from low wages in China and to be present in the Chinese market. In that sense, technology developments and innovations of the Newly Industrializing Countries (NIC) are largely motivated by cheap labour[874] and market access. All in all, any success of an STP regime may depend on whether a country is sufficiently advanced to generate a significant amount of domestic innovation.

7.3. Conclusion

As noted above, intellectual property protection is one of the central public policy pillars on which knowledge-based industries and global markets of the 21st Century rest.[875] Today, it is hard if not impossible to imagine achieving sustainable economic growth without the protection and the promotion of innovation. In this vein, an STP regime has not been offered its due place in the pantheon of IP law in the South Asian region. The emerging discourse on the feasibility of a UM regime as an appropriate mechanism to incentivise domestic innovation, especially those emanating from SMEs, has triggered Indian and Pakistani policymakers to consider such a regime in their IP laws. Both countries are currently deliberating on the possible adoption of a UM system and are engaging in further consultation with the relevant stakeholders. The Sri Lankan National IP Office is also keen on considering a UM or petty patent option for Sri Lanka soon.[876] Thus, the time is ripe for the other countries in the region to consider ap-

874 P Magic, 'International Technology Transfer & Intellectual Property Rights' (2003) University of Texas website, available at: <http://www.cs.utexas.edu/~fussell/courses/econtech/public-final-papers/Peter_Magic_International_IP_Rights.pdf> (accessed 15 May 2011).

875 Business and Industry Advisory Committee (BIAC) to OECD, Discussion Paper on 'Creativity, Innovation and Economic Growth in the 21st Century: An Affirmative Case for Intellectual property Rights (Paris, December 2003), available at : <http://www.oecd.org/dataoecd/52/45/23375023.pdf> (accessed 2 May 2012).

876 Interview with the Director General of NIPO of Sri Lanka (20 December 2012). Based on our personal communication, Sri Lanka is considering an amendment to the IP Act in order to accommodate the utility model or petty patent system.

propriate changes in the legal landscape, although creating a new IP right is only one of the determinants of technological progress. Introducing a new law alone cannot inculcate an innovation culture. It has to go hand in hand with other initiatives, including a strong foundation in technology and science, capacity building and technological learning, incentives for innovation, effective framework and mechanism for transfer of technology, and an effective enforcement of IPRs.[877]

From a policy perspective, most of the main arguments offered in favour of adopting a UM system in India and Pakistan would be equally applicable to Sri Lanka as well as other South Asian economies such as Afghanistan, Bangladesh, Bhutan, Nepal and Maldives. This does not mean that an STP regime would not be without its critics. There is increasing skepticism on the actual or potential use of the system given the very low level of IP awareness in these countries. Significantly, large players in the market have expressed their dissatisfaction over the possible introduction of a UM system. Most importantly, one of the major concerns is that the UM system is prone to be abused as the UM rights are granted without any substantive examinations. Therefore, it is of utmost importance that appropriate safeguards are placed in order to prevent the misuse of the system. Indeed, it is undeniable that an ideal regime of intellectual property rights strikes a balance between private incentives for innovators and the public interest of maximizing access to the fruits of innovation.[878] An STP system is at the beginning of a very long challenging road of producing and maintaining innovation.[879] Arguably, the adoption of an STP regime would be the first step in paving the way for an innovative country and a stepping stone for technological development. In the light of the above, it seems logical to conclude that an STP should be given due consideration in the pantheon of innovation policy in the economies of the

877 U Suthersanen, 'Utility Models and Innovation in Developing Countries' (2006) ICTSD Issue Paper No.13, Forward by R Meléndez-Ortiz and S Panitchpakdi ix-x, available at: <http://unctad.org/en/docs/iteipc20066_en.pdf> (accessed 15 March 2012).

878 RA Mashelkar, 'Intellectual Property Rights and the Third World' (2001) October 18/8 Current Science 955, available at: <http://www.sristi.org/material/1.2intellectual%20property%20and%20the%20third%20world.pdf> (accessed 10 January 2012).

879 W Weeraworawit, 'Utility Models in Thailand' in C Heath and A Kamperman-Sanders (eds), *Industrial property in the Bio-Medical Age: Challenges for Asia* (Kluwer Law 2003) 269, 273.

South Asian region. There are compelling reasons for South Asian policymakers to consider a new legal instrument for incentivising less technically advanced innovation in the region. Undoubtedly, choices that policymakers make would have far-reaching repercussion on the innovation landscape of the region. In the final analysis, South Asian nations need forward-looking policies to lay foundations for incentivising indigenous innovation in order to promote domestic creativity.

7.4. Outlook

It is hoped that this study will assist policymakers to think afresh about existing IP laws and policies in Sri Lanka, as well as in other developing countries in the South Asian region. It offers guidance for legislatures in designing an appropriate STP regime to incentivise domestic innovation. Perhaps this would have an impact on the introduction of a new legislation for the protection and promotion of incremental innovation in Sri Lanka. Of course, this research may have not found satisfactory answers to many questions for which future research could offer better solutions. Furthermore research would no doubt be required to draw definite conclusions on the specific issues such as protecting TK-based innovations and products of indigenous and herbal medicines.