

Corruption-related Decision-making in the Multinational Business Arena

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Abstract

Corruption in business occurs in situations of a *quid pro quo* relationship between public officials and business managers representing corporations. Many a time, such corrupt situations can harm stakeholder interests. Managers, as decision-makers, in corruption-related situations may fail to understand the impact of their decisions in such situation for they operate from a position of “position-dependent objectivity” (Sen, 2002) focusing on economic objectives usually. They may fail to understand that their involvement in corrupt acts can lead to violation of fundamental stakeholder issues such as human rights as in the cases of Shell and Enron (discussed in this thesis).

The thesis examines the meaning of corruption in relation to its stakeholder impact and proposes that corporate good governance in corruption-related situations is a matter of ethical decision-making, exceeding legal compliance. It explores the decision-making factors that operate within an individual manager while dealing with corruption-related situations in business and maps an analytical mental model of a decision-making manager in such situations. The thesis proposes ‘Corruption-related Decision-making’ (CRDM) as an orderly way of thinking for managers to deal with corruption-related situations in business.

The CRDM concept is demonstrated through the use of a new Corruption-related Decision-making model that protects human rights, environmental issues, sustainable development and any other relevant stakeholder issue that one may wish to include. The relevance of the CRDM concept and the model was evaluated in a survey of forty-one multinational companies from Mumbai, India. The survey confirmed that none of the respondents used any decision-making tools while dealing with corruption-related situations. The survey revealed that 40 out of 41 companies experienced rent-seeking behaviour (bribes demanded) in India. Out of these 41 companies, 26 companies ‘usually’ lost business due to non-compliance with bribe demands and another 9 companies lost business ‘sometimes.’ The survey also explored the role of ‘fear of loss of business’ in the decision-making process and found that ‘fear of loss of business’ led decision-makers change stance from a state of

passive corruption (facing demand) to a position of active corruption (making an offer), with 27 companies actually moving from a position of passive corruption to active corruption. All 41 companies, without a single exception, believed (when asked) that corruption can adversely affect stakeholder issues such as human rights.

The survey findings confirm the relevance of the CRDM model as a decision-making tool and as a good practice document in corruption-related situations. The CRDM model can motivate an internal review of a manager's persona with a reminder that ethical decision-making and protection of stakeholder rights is possible in corruption-related situations. The concept of CRDM is a potential contribution in dealing with the illegitimate, the illegal and the oppressive aspects of international business.

Preface

Sometime in 260 BC, the Indian emperor Ashoka of the famous Mauryan dynasty fought and won the bloodiest battle on Indian soil. It was the battle of Kalinga¹ fought in Eastern India, to gain control over the land and sea routes to Southern India. The battle² left 100,000 dead, 150,000 were taken as prisoners and many times that number were wounded on either side. After the battle, Ashoka surveyed the battlefield, littered with bodies of dead and dying men and beasts. Rivulets of blood flowed into a nearby river changing its colour to blood-red. While Ashoka was surveying the battlefield, an old man came up to him carrying a small bundle of cloth enveloping the corpse of a three-year old child. The old man sang praises of glory to the victorious Emperor and then held out the dead child pleading with Ashoka to bring the child back to life. The old man went on to say that ‘you O mighty emperor could take thousands of lives, so surely you can bring back just this one life.’ Ashoka knew he could not and soon left the battlefield stricken with remorse. This incident at Kalinga transformed the twenty-four year old Emperor Ashoka, within two years, into a monk preaching Buddhism and peace. He adopted the path of *Dhammapada*, the path of righteousness. Ashoka built monuments all over his kingdom displaying messages of peace, and in particular at Sarnath, he erected a pillar called the *Ashoka sthamb* (pillar) which displays till this day, a slogan borrowed from the *Upanishads*³ namely: *Satyameva Jayate*.

Literally translated, it means truth triumphs or truth shall prevail or truth prevails (modern day India has adopted *Satyameva Jayate* as the nation’s motto). However, truth usually prevails only after destruction; because a battle had to be fought, 100,000 lives lost and suffering inflicted on countless more for the moment of truth to prevail in an emperor’s mind. It happened in 260 BC and has happened again and again in human history and it continues to happen in our daily lives even today. Truth usually prevails after destruction, as witnessed in the fraud-induced corporate collapses of Enron, World.com, Parmalat and other companies during 2001 and 2002. These events led to the Sarbanes-Oxley Act in USA that aims to regulate corporate

¹ Kalinga is the modern day Indian State of Orissa in Eastern India.

² ‘A History of India’ by Romila Thapar, p.72, 1966 edition, Penguin

³ Group of late Vedic metaphysical treatises – Collins Concise Encyclopedia. Written around 800 B.C.

actions as none before. Legislation, whether it is Sarbanes-Oxley Act or the 2003 UN Convention against Corruption cannot by themselves ensure ethical corporate actions as is evident from our experiences in recent times. Enron was considered the most successful company in the energy sector and appeared to meet all legislative requirements, till it went bankrupt in 2001, with the dubious distinction of being the largest fraud-induced company failure in US history. Like Enron, some successful companies meet their *Kalinga* from time to time with the truth prevailing after damage has been inflicted on the company and society. Royal Dutch Shell was considered the most profitable company on earth, yet it faced allegations of human rights violations in Nigeria due to its corrupt stakeholder practices. Shell is just a typical case of a very successful multinational that failed to assess the impact of its own actions or inaction vis-à-vis its stakeholder environment. It is only after Shell was condemned internationally, during November 1995, that Shell adopted damage-control measures. Shell, then publicly declared human rights as a significant issue in business operations, introduced mandatory human rights training for all its executives and publicised the company's commitment to honour human rights.⁴ However, at the time of writing this thesis, Shell has not been able to win over the Ogoni in Nigeria nor resume oil drilling operations in the Ogoni region.

⁴ Shell's website discusses stakeholder issues such as human rights, sustainable development at length and displays the UN Declaration of Human Rights as their commitment to human rights issues.

Introduction

Corruption in business is amongst the serious problems confronting global society today. United Nations, World Bank, OECD⁵, and other international bodies acknowledge its occurrence in international business. However, corruption is not a recent phenomenon nor is it a creation of a particular society or civilisation or present day business operations. The incidence of corruption was observed in all ancient civilizations. Our holy scriptures mention about corruption and condemn it on moral grounds (Noonan, 1984). Instances of corruption are found in the recorded history of ancient Greece, Rome, Egypt, China and India (Noonan, 1984). Corruption continues to be a part of the contemporary social structures. We hear and read about the occurrence of corruption on a daily basis, in the media and the works of anti-corruption bodies such as Transparency International.⁶ The phenomenon of corruption cuts across all cultures and continents. Corruption in business conduct is a sub-set of a wider phenomenon of corruption prevalent in all parts of the world.

Corruption in business usually occurs during the interface between business managers and public officials. Business managers seek dispensation of favours (both legitimate and illegitimate) and public officials command the discretion to dispense those favours. Some examples of legitimate (within law) favours sought by business could be grant of trading rights, licenses, permits, award of contracts, tenders and amendment of laws to suit business interest. Illegitimate favours could range from tax avoidance; suppression of wrongdoing including illegal acts to almost anything that maybe *ultravires* the law, but suits business interests. On the other hand, public officials command discretionary powers to satisfy both the legitimate and illegitimate favours that business may need. Thus, there is room for trade of these discretionary powers, for a *quid pro quo* between public officials and business managers (Rose-Ackerman, 1978; Elliot, 1997; Harris, 2003). The desire to trade discretionary powers by a public official has often been referred to as rent-seeking behaviour (Rose-Ackermann, 1978; Bhagwati, 1982; Klitgaard, 1988, Bardhan, 1997). Likewise, the

⁵ Organisation for Economic Co-operation and Development.

⁶ Transparency International (TI) is an international anti-corruption body operating in 60 countries with headquarters in Berlin. TI extensively researches global corruption and amongst its publications runs a daily email service, which lists out all reported (in media) corruption and allegations of corruption worldwide.

desire to pay for those discretionary powers and make private gain at public cost can be termed as gain-seeking behaviour of business managers.

Traditional definitions of corruption in literature do not reflect the far reaching consequences of corruption in business. They are narrow and limit themselves to the understanding that a corrupt act amounts to deviating from some norms (Scott, 1972); (Huntington, 1968) or laws (Leff, 1964) or jumping the queue (Rose-Ackerman, 1978) or securing an undue favour or making a private gain (Nye, 1967) at public expense. These definitions fail to explain the possible negative impact corrupt acts of business can have on the stakeholder community (Alatas, 1990). An act of corruption on part of a multinational business manager may have the potential of *inter-alia* jeopardising human rights, the environment and sustainable development. Many a time the decision-making manager may fail to identify all the stakeholders who could be affected and fail to take into account that sustainable development is a concept not restricted to the present generation of stakeholders, but includes all the future ones whose interests might be endangered. Therefore, corruption needs to be redefined in terms of the resulting implications of a corrupt act on part of a decision-making manager. Accordingly, the compelling circumstances of business that many a time lead managers to take part in corrupt acts needs to be revisited and examined in the perspective of outcomes relevant to stakeholder issues. The purpose of redefining corruption for business managers will fail if one is not able to drive home that corruption has serious potential to damage, to harm and destroy society many a time beyond repair. With this purpose in mind, I propose a redefinition of the concept of corruption in this thesis so that it becomes more relevant and salient for business managers.

Defining corruption from the perspective of a decision-making manager will overcome the limitations of existing definitions of corruption in literature. The need to redefine corruption also arises from the need to appeal to the opinion leaders of our contemporary society who control societal wealth as CEO's and senior decision-making managers of multinational corporations. External control mechanisms of anti-corruption alone are not likely to win the battle against corruption without the aid of internal self-restraint decision-making models. Transparency International admits that the incidence of corruption is increasing and anti-corruption bodies are losing the

battle.⁷ When we place societal wealth in the hands of bright minds that are members of our society who manage these multinational companies, we also need to provide them with perspectives that motivate them to refrain from corrupt acts. The aim is to encourage internal self-restraint mechanisms (framework offered in the thesis) within the hearts and minds of decision-making executives. Engaging and eliminating corruption has so far been seen as a legal process at international and national levels; however, it is essential that elimination of corruption is considered also as a process of conscience in terms of honouring basic stakeholders rights at the individual managerial level. Democratic societies cannot function on legal processes alone but to thrive need commitments from individuals who are part of society. This thesis aspires to convey that message to decision-making managers.

The thesis comprises of eight chapters. Chapter one defines corruption and bribery as understood in current literature and explains associated terms, including gift-giving and its disclosure. A new definition of corruption is proposed that takes into account the impact of corruption on the stakeholder environment. The conceptual distinction between “active corruption and passive corruption” (Roy, 2001; Roy & Singer, 2004; Roy, 2004) is revisited to understand the intent and role chosen by a bribe-giver in a situation related to corruption or bribery. The second chapter discusses whether good governance should be interpreted as compliance with law or should ethical decision-making be an added dimension. It is in this context that good governance is discussed in this chapter vis-à-vis the current international laws dealing with corruption. The chapter proposes that corporate good governance in the area of corruption in business can be achieved by moving from a narrow legal compliance approach to ethical decision-making

Chapter three of the thesis examines the dynamics of corruption in business represented by the factors that influence decision-making in corruption-related situations, the position from which a decision-maker operates in such situations, and a decision-maker’s mental model in terms of the likely exchange and psychic utilities operating at the individual decision-maker’s level. The fourth chapter provides the theoretical grounding and context for a new CRDM (corruption-related decision-

⁷ Peter Eigen, Chairman of Transparency International admitted that corruption is on the rise while releasing the Bribe Payers Index 2002 in Berlin and we are losing the battle (www.transparency.org).

making) model. Chapter five provides an easy-to-use decision-making model for corruption-related decision-making (CRDM) by business managers, based on the theoretical grounding discussed in the previous chapter. The decision-making model is designed to help a manager conclude within a very short span of time: whether to participate or not in a transaction involving bribery and/or corruption. It is an attempt to provide a contextual meaning to one's decision. The model provides an opportunity to assess the impact of one's decisions on stakeholders. The CRDM model proposed in this chapter incorporates protection of issues such as sustainable development, environmental issues and human rights.

Chapter six of the thesis analyses two significant cases of highly successful multinational companies and their complicity in human rights violations and environmental issues. These real life cases are narrated and discussed with a view to substantiate the utility of the CRDM model to avoid acts of corruption on part of business that lead to violation of stakeholder rights and consequent rejection by the stakeholder community. The seventh chapter discusses the results of a survey of 70 multinational companies conducted at Bombay, India during April 2002, June 2002, May 2003, September 2003 and March/April 2004. The objective of the survey was to understand whether the conceptual CRDM model as discussed in chapter five is relevant in practical decision-making. Another major objective of the survey was to understand whether CEO's and senior managers believe that corruption can negatively impact human rights and environmental issues in corruption-related situations. Chapter eight, the final chapter, highlights the contribution of CRDM (corruption-related decision-making) to current business theory and practice to deal with the illegitimate, the illegal and oppressive ways of business. It discusses the emerging trend of management thought with a shift towards the concept of an organisational economy (Ghoshal & Moran, 2005) as opposed to the market economy concept and CRDM's role to reduce corruption in business as an organisation based response, blending ethics and strategy in the process.

Thus, the thesis places a choice of conscience on the decision-making table of powerful multinationals companies and their managers with a new concept in strategic management thought called corruption-related decision-making. The idea is to address the consequences of corruption on global stakeholder issues of grave

concern by appealing to the bright minds of our society who are at the helm of multinational corporations, to avoid such situations. It is all the more important to do so, as many multinational companies command greater wealth and influence than many nations.

Multinational Businesses and Corruption

Multinational business decision-making relating to corruption involves the satisfaction or rejection of rent-seeking behavior of public officials or a conscious design on part of decision-making managers to buy the discretionary powers of public officials for a price. Such decisions pose challenges and involve risks for any decision-making manager as they carry with them the potential to harm or help the growth of the multinational company as well as a corporate executive's career graph. Such decisions can be viewed in terms of narrow corporate strategies to achieve profits, gain market shares discarding stakeholder interests cautiously, or they can be viewed in broader terms of corporate social responsibility. The more serious the impact on stakeholder groups, the more serious the consequences could be for the company and the decision-making executive. One may gain business and secure business interest by participation in a corrupt act or lose business by non-participation. Needless to say, participation in corrupt acts raises moral questions.

In terms of their impact on stakeholders, multinational businesses have increasingly been subject to the scrutiny of various stakeholder groups in recent times. Today's corporations cannot escape the fact that its stakeholder environment expects higher standards of corporate conduct than ever before, and these standards are not likely to get diluted but raised over the years to come. Decision-making challenges in multinational business operations are more pronounced than ever before in corruption-related situations. Corporate performance measures are no longer restricted to profitability indicators, but include stakeholder expectations of compliance with a whole range of issues such as human rights and environmental issues. Against this backdrop of stakeholder expectation, it is critical that the phenomenon of corruption is studied from the perspective of a multinational business decision-making manager. The involvement in a corrupt act on part of any multinational company could have serious consequences for its public image and acceptance by society. Two such

significant examples of multinational companies and their complicity in corrupt acts that led to accusations of human rights violations by the stakeholder community are discussed in this thesis. These cases illustrate the challenges of corruption-related decision-making that a decision-making manager can face in the multinational business arena.

When a manager actively plans, insinuates, arranges in anticipation to satisfy or encourage the rent-seeking behaviour of public officials, the manager's actions can never be interpreted as anything other than that of an active participant. In order to understand one's position in a corruption-related situation, the distinction between 'active' corruption and 'passive' corruption (Roy, 2001) must first be drawn. The decision-making manager may offer his or her perspective and even believe that the arguments offered are correct in so much as they are objective and decisions were objectively made in the greater interest of the company. But again, this cannot be and should not be treated as objective because the decision-making manager cannot separate himself or herself from the usual object of observation (economic goals). The decision-making manager in a corruption-related situation is in a situation of "position-dependent objectivity" or "positional objectivity" as Sen (1993:126; 2002:463-483) writes, "what we can observe depends on our position vis-à-vis the objects of observation." The observer (decision-making manager) cannot separate oneself from the object of observation (economic goals). According to Sen (2002:465) the notion of positional objectivity, "is important in understanding the objectivity of beliefs, whether or not these beliefs happen to be correct." The presence of positional objectivity in a corruption-related situation is apparent from the memoirs of Carl Kotchian, director of Lockheed.⁸ Kotchian, in his personal memoir, *Lockheed Sales Mission: Seventy Days in Tokyo* (Jacoby et.al, 1977:163) wrote:

Was it really possible, from the standpoint of reality, to say, "I refuse to pay"?
I thought of all the effort expended by the thousands of men since the conception and designing of the L-1011 Tristar; our superhuman efforts to avoid bankruptcy because of our own financial difficulties as well as similar difficulties of the engine maker (Rolls Royce); the successive defeats in both the KSSU and Atlas competitions in the European theater. I thought of the painful final efforts of the seventy days. And I thought of being told: If you make this payment, you can surely get

⁸ Lockheed Corporation confessed under amnesty during the 1975 US congressional hearings; to have paid bribes in 41 countries out of the 70 countries that Lockheed did business in (Noonan, 1984).

the order of as many as 21 airplanes.” I must admit that my moral and ethical considerations gave way to the commercial gains we had been seeking for so many hard days and weeks.

Kotchian’s question: “was it possible from the point of view of reality?” offers a position-dependent insight into the mind of a decision-making manager in a corruption-related situation. Kotchian concludes that there is no other solution but to pay a bribe for securing the much needed business deal.

The discussion here is not to find fault with either the bribe-receiver or the bribe-giver, but to achieve a deeper understanding of the mind of a decision-making manager. It is possible that Carl Kotchian may have written his memoirs as a public relations device or he may have written it in remorse and in reflection. Whatever the purpose, if we search for answers in any situation of bribe-taking and bribe-giving we are likely to face the proverbial question of whether the chicken came first or the egg came first. Someone wanted to pay a bribe so someone took it or it could be someone asked for a bribe so somebody paid it. To avoid such ambiguous areas in corruption-related situations, we need to consider that doing business or the right to do business in society is derived from an unwritten social contract between the company and society. The company is required to honour some basic norms, which can be better explained in the context of ISCT thinking (Donaldson & Dunfee, 1999) i.e. Integrated Social Contracts Theory.

ISCT thinking proposes that certain basic norms are recognised as universally acceptable and are a part of an implicit social contract between business and society. The issues of human rights, environmental concerns and sustainable development are not subject to relativist thinking but are of universal concern and relevance. Corruption or acts of corruption that undermine universally accepted norms are clearly a violation of the social contract between business and society. If these critical issues or universal norms are incorporated in a corruption-related decision-making (CRDM) process, not only will the managers of a socially conscious company be able to honour their stakeholder obligations but also pave the way for application of ethical principles in other aspects of business conduct.

Ethical Principles and Conduct: Value and Utility

Ethics as a body of knowledge has found practical application (ethical conduct) in business situations, just as philosophy in general has influenced understanding of moral issues in society. Business ethics and its relevance in strategic thinking are now being mentioned in management literature more than ever before (Luijk Van Henk, 2000:3). Practical application of business ethics requires a dialectic understanding of issues in hand by a decision-making manager (Singer, 2002). Thinking in terms of profit and utility in the market place is one side of the coin. Values based outcomes relating to overall human flourishing are the other side of the coin. Both are complementary; they are not mutually exclusive. If both value outcomes and utilitarian outcomes are evaluated by business managers it will go a long way to ensure that businesses thrive and executives live longer in good health.

There is indeed a cash value of ethical conduct besides the spiritual side of it. Ethical conduct is likely to help an executive maintain good health free of undue stress and enjoy what he or she is doing and that can mean added years of life and earning to the executive. Rational company executives do not want to die on the corporate battlefield of unhealthy competition, corruption, intrigue, conspiracies and aim for a Mercedes Benz as his or her coffin, a fate that befell J Clifford Baxter, a senior executive of Enron. The executive shot himself in his Mercedes Benz because he could not bear the stress of investigations into his role in Enron's bankruptcy (McClellan & Elkind, 2003). Major corporate scandals have executive suicides associated with them. For instance, when the Lockheed investigations started, the treasurer shot himself (Jacoby et al, 1977); when United Brands was exposed in a bribery scandal in South America, the CEO Eli Black jumped off the twenty-second storey of his New York office building (Jacoby et al, 1977). The Academy of Management, USA, prompted by the series of fraud induced corporate failures in USA during 2001 and 2002, as a matter of reflection, admitted in an email to academia around the world that education institutions and business schools had failed to morally educate business school students about business conduct.⁹ Therefore, successful business conduct is ethical business conduct which in turn can ensure rising executive career graphs and handsome rewards, devoid of situations that are

⁹ Academy of Management USA sent out a draft resolution admitting this serious lapse on part of business schools in educating business school students in August 2002.

tarnished by allegations of corruption, fraud and rejection by the stakeholder community. This is possible through ethical decision-making and practices based on ethical principles and reasoning. Ethics generally deals with the reasoning process and is concerned with the justification of actions and practices in specific situations (Buchholz & Rosenthal, 1998).

This thesis aims to address similar objectives, but specifically to assist decision-making managers deal with corruption-related situations ethically through a process of “learning to think”, as discussed in Buchholz & Rosenthal (2001:30). The authors believe that when we learn to think we also become free moral beings in the process. Freedom involves moral responsibility and this in turn involves the ability to recognise moral problems. A plurality of conflicting interests must be integrated, and that can only be done by the morally perceptive, creative, individual operating in response to specific conflicts. The way of creatively integrating these is then a “manifestation of one’s moral character” (Buchholz & Rosenthal, 2001:29).

The corruption-related decision-making (CRDM) process as proposed in this thesis has a specific purpose: it is to make individual managers think and recognise moral problems, in specific contexts. It is a logical process that imports an ethical dimension to grey areas in corruption-related situations, with a view to achieving either an outright rejection of an action due to its consequences on others, or a justification of one’s decision in a specific context within the framework of corporate social responsibility. The CRDM process ensures that “ethical missteps” (Sims, 2002) do not occur defeating all other strategies for success.

CRDM and Strategy

Strategy is always designed to win, whether in business or in military science from where the concept originates. According to military science, strategy is an unambiguous term about the science and art of winning at war that requires planning (Husted & Allen, 2000) to achieve success at war. What constitutes a win in military science is bound to inflict pain and suffering on the enemy, but the same logic cannot be extended to the concept of a ‘corporate win’ in a civil society. What then constitutes a win for a multinational company (or any business) in society? Should a corporate win be defined as achievement of profitability, increase of shareholder

capital, growth of operations and expansion of market share or should it also *include* respect for human rights, good environmental practices, good manufacturing practices that protect sustainable development? Pursuing economic goals such as seeking profits will mean making money but implementation of the second part of the same question could mean outflow of money or reduction of profitability. Ostensibly, it represents a conflict and reflects the ethical problems in strategic management. According to Hosmer (1987:3) it is “a conflict between an organisation’s economic performance (measured by revenues, costs and profits) and its social performance (stated in terms of obligations to persons both within and outside the organisation).”

These contradictions can be debated either way and represent binary issues whose solutions lie in dialectic reasoning or analysis (Singer, 2002). For any given thesis, there is an anti-thesis. A winning strategy for any business is a matter of dialectic understanding of how a win or victory should be defined. A good starting point to seek an answer would be to set out all the narratives and perspectives and then compare the elite-consensus view with the dissenting views including cultural specific understanding and minority voices (Singer, 2002), thereby restating or reframing the problem in its entirety. This would amount to shifting the paradigm of strategic management thought from a narrow perspective of an elite-consensus view of business reality to a state where dialectic reasoning becomes the central principle in strategic business analysis (Singer, 2002), thus leading to solutions that are everlasting with win–win situations for all concerned. This is essential because “the traditional language of competitive strategy is often associated with relentless pursuit of essentially selfish interest, by stronger and more powerful players” (Singer, 1997:72). Mindless pursuit of competitive strategy is akin to a “descending iron cage” that Max Weber associated with calculated forms of rationality as it creates victims of economisation (Singer, 1997:73). This situation can be consciously overcome by adapting models of rationality augmenting the language of strategy so that strategic management becomes more akin to ‘business ethics.’

Strategic management thought has come a long way during the past two decades from the point where the business of business was to do business and nothing more. Today, strategic management thought acknowledges the existence of the stakeholder concept and a social contracts theory that binds business with and as a part of society

(Donaldson & Dunfee, 1999). Nowadays, economic and social objectives as competing with each other are considered an obsolete argument and a false dichotomy (Porter & Kramer, 2002:32). Today, many successful companies who respond to the global stakeholder environment consider ethical decision-making as a part of rational decision-making (Singer, 1994).

The notion that a 'rational economic man or a rational economic organisation' is devoid of human feelings is discarded by Klein (2002). The author argues that emotions and feelings are essential ingredients to rational decision-making and practical rationality. It "involves the ability to determine and achieve ends associated with human flourishing or happiness" (Klein, 2002). Practical rationality therefore, "implies both determining the correct means for achieving the desired ends and aiming at those ends which promote what Aristotle calls human flourishing or *eudaimonia*" (Klein, 2002:349). Human flourishing can be analysed from the fundamental principle of hedonism as established in the ethical theory of utilitarianism propounded by John Stuart Mill and Jeremy Bentham. The original meaning of the term 'hedonism' implies achieving maximum pleasure at the cost of very little pain. When applied to business actions and decisions, the main stream meaning of 'hedonism' or utilitarian theory involves achieving greatest amount of happiness for the greatest number of human beings as opposed to pain inflicted on human beings by business actions and decisions. In analyzing business decision-making outcomes one could adopt a qualitative approach (as proposed by John Stuart Mill) or a quantitative approach (as proposed by Jeremy Bentham) to determine the outcome. In doing this, one must remain mindful of the danger that the rights of minorities might be compromised and minorities may suffer. Indeed, this is a standard critique of utilitarian theory. With quantitative approaches, the limitations of all methods of quantification and assessment must also be understood, which in turn implies that pluralistic approaches are often appropriate (eg: Resnick, 2003). Overall, the ends and outcomes of any rational decision-making process should necessarily lead to human flourishing and not human suffering, therein lies the challenge in a corruption-related situation before any decision-maker.

Chapter One: Redefining forms of Corruption and Corruption-Related Decision-making (CRDM)

“Often what the general manager seeks and needs is a more or less orderly way of thinking through the moral implications of a policy decision” (Goodpaster, 1984:3)

Introduction:

Recorded history texts provide instances of corruption and bribery in all ancient civilizations, and through the ages our society has never been without corruption (Noonan, 1984). More than two thousand years ago in India, corruption and its related practices have found mention in *Kautilya’s Arthashastra*.¹⁰ This work mentions 40 different ways in which a public official can make illegitimate gain from public office (Rangarajan, 1992:295-297). The prevalence of corruption and bribery in every ancient civilization, be it Babylonian, Egyptian, Hebrew, Indian, Chinese, Roman and Greek, is discussed at length in the work of Alatas (1990). Thus, human society has never been without the presence of corruption. It exists in all societies (Huntington, 1968:492) and has been accepted as a seemingly inevitable fact of life by people from all over the world today (Pieth, 1999). It is also a common perception amongst people that corruption is spreading and embedding itself within social sub-systems (Ryan, 2000). The phenomenon of corruption is inseparable from questions of public morality and morality in general (Theobald, 1990:1).

There is something immoral and wrong with the phenomena of corruption, bribe giving and bribe taking. Yet corruption and acts of corruption occur daily all over the world. Transparency International, an international NGO fighting corruption, records daily media reports of corruption from all over the world; and emails these headlines with web sources to access the individual cases, to members on its mailing list. Not a single working day passes without an instance of corruption being reported as having occurred in some part of the globe. Corruption and bribery are not confined to any geographical boundary or any single nation or a particular culture, but occur universally on a daily basis. The domain of corruption and bribery is comprised of participants who gain from their corrupt acts to the detriment of others in society. It is

¹⁰ *Arthashastra* covers all aspects of statecraft and administration. It was written by Kautilya, Prime Minister in Chandragupta Maurya’s empire. Written around 300 –310 B.C.

these others who bear the cost and consequences of corruption or bribery in some form or the other. This chapter defines corruption and bribery as understood in current literature and explains associated terms, arguments for and against corruption, gift-giving and its disclosure. A new definition of corruption is proposed in the thesis which takes into account the impact of corruption on the stakeholder environment. The conceptual distinction between “active corruption and passive corruption” (Roy, 2001; Roy & Singer, 2004; Roy, 2004; Roy, 2005) is revisited to understand the intent and role chosen by a bribe-giver in a situation related to corruption or bribery.

As in daily life, corruption frequently occurs in trade and commerce and often becomes a decision-making issue for many managers in multinational corporations. They encounter corruption at different times, in different situations at home and overseas. Such corruption in business is either due to the rent-seeking behaviour of public officials (Bhagwati, 1982; Bardhan, 1997) or gain-seeking intentions of managers. These involve decisions---whether to participate in a corrupt act and gain business or lose business by non-participation; whether to risk reputation and company image or not risk it at all; whether to think of economic benefits and personal agendas alone or to take into account stakeholder responsibilities as well.

Most multinational business managers encounter these questions in a multi-location and multi-cultural context. These add to the complexity of the process as managers are also aware that the world of multinational business implies higher interdependence, more threats and opportunities, and needs greater awareness of the world’s diversity and the ramifications of one’s action in terms of host and home countries (Wartick & Wood, 1998). When companies are convicted of misconduct in business or irresponsible behaviour towards their stakeholders, they experience a significantly lower return on assets and lower return on sales (Ferrell et.al, 2002:250). Several studies have examined whether socially responsible behaviour is associated with profitability of a company. Some studies concluded that there is a positive relationship between the two, while others did not find any significant association between the two, but none of the studies found any negative association (Velasquez, 2002:42). Therefore, a corporation’s success can be either made or marred by the quality of socially responsible actions towards its stakeholders.

Considering the importance of corruption-related decisions to a corporation's success or failure in many situations, decisions relating to situations of corruption and bribery need to be studied from the perspective of strategic management. In order to address the company's long-term strategic interest managers need an "orderly way of thinking through the moral implications of a policy decision" (Goodpaster, 1984:3) while dealing with corruption-related situations. Corruption-related decision-making (CRDM) is that orderly way of thinking through the moral implications of a policy decision in the realm of corruption and bribery. It is concerned with the protection of stakeholder interests and strategic interests within the framework of corporate social responsibility. Corruption-related decision-making or CRDM can, therefore, be regarded as a new concept in strategic management thought whose purpose is to consciously protect stakeholder issues during decision-making in corruption-related situations.

Background Literature: Corruption and Bribery

Corruption and bribery in whatever form and manner have been accepted as universal phenomena by different authors (Leff, 1964; Nye, 1967; Huntington, 1968; Johnston, 1982; Noonan, 1984; Klitgaard, 1988, Theobald, 1990). Most authors have studied the causes of corruption, its consequences, and its occurrence as a part of political structures as well as the public official's role in corruption (Scott, 1972; Rose-Ackerman 1978; Klitgaard, 1988; Alatas, 1990; Theobald, 1990; Mauro, 1995; Mauro, 1997; Johnston, 1997; Perry, 1997; Tanzi, 1998; Harris, 2003). Corruption has also been seen as a matter of "embedded local cultures" and as a result of "political structures and institutions" (Heywood, 1997).

Available literature states past cases, provides justification for the passage of the FCPA (Foreign Corrupt Practices Act) by the US government (Noonan, 1984; Jacoby et al. 1977) or enumerates consequent disadvantages faced by US companies while doing business overseas (Jacoby et al.1977; Kaikati et al. 2000). Publications discussing corruption-control and installation of control mechanisms focus on the public official (Klitgaard, 1988; Rose-Ackerman, 1999). Some scholars have explored the correlation between the stages of a nation's development and their influence on corruption and found that increased corruption is experienced as an economy takes off

and every developing nation experiences increased corruption in times of rapid development (Wraith & Simpkins, 1963; Theobald, 1990).

In certain situations corruption has been seen as a positive occurrence. Altman (1989) considered corruption and black market in the erstwhile Soviet Union as a “market correction mechanism”, correcting the Soviet government’s price and distribution control policies. Tillman (1968:437-443) considered the black market price as a “mandatory pricing system.” Szeftel (1983) in his study of private enterprises in Zambia felt corruption led to ‘formation of capital and enterprise’ as Zambian public officials who amassed wealth through corrupt means became entrepreneurs in later life. Kiltgaard (1988) finds corruption useful in some organizational situations to cut down bureaucracy and save time. However, authors such as Leff (1964); Scott (1972); Szeftel (1983); Klitgaard (1988) and Theobald (1990) have extensively argued against corruption asserting that the negative side of corruption far outweighs its perceived contextual benefits. Corruption has also been considered as a matter of culture tracing its origins to paying homage to the tribal chief or paying obeisance to a monarch (Wraith & Simpkins, 1963) but this argument is considered outdated by the stakeholder community and in particular in the anti-corruption efforts of Transparency International and the United Nations.

In recent times, scholars have studied the impact of corruption on society (eg: Alatas, 1990). Empirical studies, such as Mauro (1997) provide tentative evidence about the economic effects (i.e. lowers growth and investment) of corruption. Mauro (1998) provided the first cross-country (across sovereign nations) empirical evidence that corruption affects the composition of government expenditure and adversely impacts government expenditure on education. Gupta, Demello, Sharan (2001) suggest in their study that nations with higher incidence of corruption also experience higher military expenditure in relation to both a nation’s GDP and government spending. Leite & Weidmann (2002), in their empirical studies of natural resource rich nations, who are otherwise poor, found that such nations experience slow economic growth due to the incidence of rent-seeking activities of public officials and corruption. Gupta, Davoodi & Tiongson (2002) concluded in their empirical study that nations with high levels of corruption experience adverse consequences on infant mortality rates, higher percentage of low birth weight babies and higher dropout rates in primary schools (the

authors used Corruption Perception Indices¹¹ of each country selected for the study and then used individual country data against the above three variables to support their findings). Tanzi (1998:45) explains the qualitative effects of corruption on the economy, namely: distortion of markets, distortion of allocation of resources, distortion of incentives, corruption as an arbitrary tax, increase in poverty, reduction of the legitimacy of a free market mechanism and distortion of the fundamental role of government. Perry (1997) views corruption as a part of human activity in the geographical context and has discussed the causes, proximates, characteristics and functions of political corruption. Harris (2003) in his study of political corruption has distinguished between nations of low corruption and high corruption.

Elliot (1997) mentions three different actors in the arena of corruption, namely: elected officials and politicians, non-elected officials (identified as judiciary and the bureaucracy) and private actors (which includes business). Elliot (1997) also distinguishes between “grand corruption” and “petty corruption”. She describes ‘grand corruption’ as corruption occurring at the highest levels of government involving decisions such as “procurement of military equipment, civilian aircraft, or infrastructure or broad policy decisions about the allocation of credit or industrial subsidies” (Elliot, 1997:178). While “petty corruption” according to Elliot, occurs when private actors interact with non-elected government officials for transactions such as “taxes, regulations, licensing requirements and the discretionary allocation of government benefits.”

However, in all these studies the decision-making role of business managers as a part of what can be called the “supply side of corruption” (Roy, 2001) has not been explored. It is clear that there is dearth of significant literature or specific scholarly work that could provide decision-making guidelines to lead business managers through a decision process when dealing with corruption in business.

¹¹ Corruption Perception Indices are annual indices released by Transparency International. They convey the level of corruption in a country as perceived by its people (business leaders, press, scholars, accountants are usually surveyed)

Corruption and Bribery in International Business:

Bribery in international business has increasingly come under scrutiny of international organizations such as the OECD¹², UN¹³, IMF¹⁴, World Bank and regional organizations in Europe, the Americas and Africa. In February 1999, the OECD criminalised bribery of foreign public officials through the OECD Anti-bribery Convention, 1999. The document is internationally significant as it is signed by 34 nations who control 70% of exports and 90% of direct foreign investment worldwide (Pieth, 1999). Moreover, ten international anti-corruption conferences under the aegis of Transparency International; the role played by (TI) Transparency International's 60 national chapters, the strengthening of the FCPA¹⁵ in USA; the regional anti-corruption conventions in Africa, America and Europe (discussed in the next chapter) and the United Nations Convention against Corruption, 2003 indicate deep concern about the prevalence of corruption in international business and public life.

The recent United Nations Convention against Corruption, 2003 (UNCAP) is by far the most comprehensive international effort covering all aspects of corruption in public life and business. These international efforts imply that business managers and public officials are expected to refrain from corruption and bribery. However, these anti-corruption conventions ignore the myriad situations today's multinational managers face in day-to-day conduct of business in many countries around the world where the rule of law and civil society is far from desirable. Moreover, international efforts in the form of such signed conventions lack uniform legislative enforceability across all signatory nations as well as non-signatories due to various reasons ranging from varying stages of ratification of these instruments (discussed in next chapter) to differences in the judicial and legislative structures of individual signatory nations (Pieth, 1999). Legislation has not been successful in curbing the incidence of corruption in international business as is evident from the last (BPI) Bribe Payer's Index (see appendix I), published after the OECD Convention came into effect.

What is then required, is a multi-faceted approach to tackle corruption in international business. Effective curbing of corruption in international business through legislation

¹² Organisation for Economic Co-operation and Development.

¹³ United Nations

¹⁴ International Monetary Fund

¹⁵ Foreign Corrupt Practices Act

is still in its nascent stages, and will take years to catch up with the reality of doing business in many parts of the world. One significant way could be to use the enormous influence that multinational companies exercise in global business by encouraging MNC¹⁶ managers review corruption-related situations and decisions within a framework of corporate social responsibility. Multinational companies by virtue of their phenomenal growth in their size, operations and importance are in a position to influence global business ethics (Donaldson, 1989). Buller, Kohls & Anderson (1991) further maintain that multinationals are in the best position to create a global ethic. Prahalad & Hammond (2002) believe that multinational companies who enter and invest in poorer countries to serve the “bottom of the pyramid” market will be able to steadily reduce the effect of corruption. It is, therefore, worthwhile to re-examine the concept of corruption in business from the perspective of a decision-making manager.

Corruption and bribery are by nature private arrangements for private gain (Nye, 1967; Huntington, 1968), but any such private arrangement for private gain needs to be revisited to satisfy not only one’s moral conscience but also address stakeholder concerns. In the past, some authors have considered corruption in international business as a matter of ethical relativism and attributed it to differences in culture (Wraith & Simpkins, 1963; Fadiman, 1986:128). This understanding influences business decision-making even today. The oft quoted, “when in Rome, do as the Romans” is considered as the best way to do business in a different culture to ensure success. Francis (1991) has explained the “when in Rome” approach as a matter of ethical relativism. The multinational business manager operating in a global environment faces conflicts between home culture and host culture, between shareholder interests and stakeholder concerns, between one’s moral conscience and profit objectives, and conflict between one’s legal obligations and career advancement. A clearer understanding of corruption and its many hues would help formulate corruption-related decision-making as a part of corporate strategy to eliminate negative stakeholder outcomes.

¹⁶ Multinational Corporations

What is Corruption?

What constitutes corruption and acts of corruption is a question of debate among scholars; however, they agree on certain common features evident in an act of corruption. Scott (1972:3) sums this up, “Corruption, we would all agree, involves a deviation from certain standards of behaviour.” This gives rise to a series of pertinent questions as to what those standards of behaviour are from which one deviates? What are the criteria laid down to establish those standards and who lays them down? Whose behaviour is to be checked against those standards? Scott (1972:3) mentions three broad criteria, each with a distinct analytical focus but overlapping with each other, namely: public interest, public opinion, and legal norms. He debates what constitutes “public interest” and what is “public opinion” and issues of law. He concludes that both public interest and public opinion have different connotations in different situations and may be difficult to use as yardsticks in all cases. If compliance with the law is the expected standard of behaviour, then are we narrowing down the issue of corruption to contractarian requirements and in the process are we relegating a moral problem to a contractarian solution? The requirement of compliance with law would still harbour lingering doubts as to what is acceptable behaviour and what is not, and whether the law in question is unconstitutional or repressive. Scott (1972:5) addresses this dilemma aptly when he writes:

Our conception of corruption does not cover political systems that are, in Aristotelian terms, “corrupt” in that they systematically serve the interests of special groups or sectors. A given regime may be biased or repressive; it may consistently favour the interests, say, of the aristocracy, big business, a single ethnic group or a single region while it represses other demands.

Scott’s definition mentions “special groups” whose interests are served, albeit within the law by designs of a political structure. Some formal special interest groups who expressly promote the interest of their own groups within the law are professional bodies of accountants, lawyers, doctors, architects, engineers and trade associations, wherein the rules are set for satisfying specific group interests, and in so far as they do that, such systems still remain corrupt. This happens if in the process of serving their own interest, they act to the detriment of society. Likewise, the theory of ‘milgram’s

six degrees of freedom'¹⁷ or the concept of chinese *guanxi*¹⁸ or the old boys network are indicators of the prevalence of informal groups of people who can end up serving their group interest to the detriment of others. The activities of such groups may meet legal compliance but that compliance may not rule out pursuit of corrupt advantage over others.

Legal compliance, however, as a criterion is not ruled out and scholars have used words like “norms”, “formal duties”, “extra legal”, “system of public order” to define corruption and the underlying notion of legal compliance. Leff (1964:510) has highlighted the outcome of a corrupt act, namely: private gain at the expense of common good. He defines corruption as:

Corruption is an extra-legal institution used by individuals or groups to gain influence over the actions of the bureaucracy. As such, the existence of corruption per se indicates only that these groups participate in the decision-making process to a greater extent than would otherwise be the case.

Leff’s definition strengthens the use of legal compliance as a criterion, but at the same time discusses influence to a “greater extent than would otherwise be the case” as an outcome of the process. However, Leff’s use of the word “extra-legal” and his definition and related work is critically assessed in the work of Alatas (1990: 177-182).

Alatas (1990:3) categorises corruption into seven distinct types: transactive, extortive, investive, defensive, nepotistic, autogenic and supportive and provides a context-specific insight into corruption in public office. Huntington (1968:492) defines corruption as, “behaviour of public officials, which deviates from accepted norms in order to serve private ends.” Huntington highlights the private nature of gain made through a corrupt transaction by public officials. Nye’s (1967:567) definition is more comprehensive:

Behaviour, which deviates from the formal duties of a public role (elective or appointive) because of private-regarding (personal, close

¹⁷ Milgram’s six degrees of freedom is based on an experiment conducted by Prof. Milgram on a hypothesis that everyone in this world is connected through a short chain of acquaintances (approximately 6 persons in a chain).

¹⁸ The underlying theme in a Guanxi relationship is a reciprocal relationship for mutual benefit between people in business or otherwise. Guanxi is a word coined during Confucian times to indicate various relationships between the Emperor and people and between networks of people.

family, private clique) wealth or status gains: or violates rules against the exercise of certain types of private-regarding influence.

Nye (1967) offers a better understanding by mentioning the possible beneficiaries of a public official's corrupt transaction. Rogow and Lasswell (1963:132) define it from the viewpoint of public good or common good, thus:

A corrupt act violates responsibility toward at least one system of public or civic order and is in fact incompatible with (destructive of) any such system. A system of public or civic order exalts common interest over special interest; violations of the common interest for special advantage are corrupt.

Klitgaard (1988:75) contends that illicit behaviour (corruption) flourishes when agents (public officials) have monopoly power over clients by virtue of great discretionary powers that they (public officials) command by way of occupying a public office. On the other hand the agent's (public official's) accountability as an agent to the principal (the nation's electorate) is weak. In his work detailing control mechanisms for corruption, he has defined these ingredients of corruption in an informal equation thus: $\text{Corruption} = \text{Monopoly} + \text{Discretion} - \text{Accountability}$. In other words, corruption is a situation of monopoly arising out of the discretionary powers vested in a position without being accountable for one's actions.

A general consensus is noticed amongst these scholars: that corruption is for private gain at the expense of common good, it is a deviation from norms and subverts the rule of law. 'Private gain at the expense of common good' provides the ground of ethical reasoning against corruption. However, literature also provides exceptions to what is perceived as common good, but in reality may not be for individual good nor satisfy basic principles of equity and justice. For instance, in war time Germany the Nazi perception of common good involved imprisonment and extermination of Jews. Rose-Ackerman (1978:9) explains this situation in her book when she writes, "One does not condemn a Jew for bribing his way out of a concentration camp." The morality of this act of corruption overrides issues of legal compliance and private gain. Hence, the definition of corruption needs contextual application. Johnston (1989:16) says "there are many forms of corruption, differing in participants, settings, stakes, techniques, and cultural legitimacy."

Corruption, thus, is private gain at public cost and involves deviation from rules, norms and the law. It is also a trade in discretionary powers of a public official with an underlying element of a *quid pro quo* relationship between the public official and the beneficiary of the discretionary powers. It usually has the ingredient of illegal and immoral gratification. However in certain cultural situations, the discretionary powers are exercised by a public official's corrupt act to provide private gain to a close circle of people at public costs, without the underlying element of reciprocity. These beneficiaries (people) could belong to the public official's own family, extended family, circle of friends and associates, persons from one's tribe or ethnic background or province. Such misuse of powers vested in a public office of national trust is undertaken by the public official to express love, devotion, loyalty towards one's family, tribe, province or friends and associates, although the public official is not paid for it by the beneficiaries (Abueva, 1966). This exception to the standard *quid pro quo* practice also amounts to corruption because the actions are designed to provide an unfair advantage to certain individuals or a section of society.

Tanzi (1998:24) addresses all these situations by comparing corruption to an elephant:

Like an elephant, while it may be difficult to describe, corruption is generally not difficult to recognize when observed. In most cases, different observers would agree on whether a particular behaviour connotes corruption.

Morals, Ethics and Corruption:

Corruption like any other human activity in society is subject to evaluation against certain moral standards. These are standards of expected behaviour based on beliefs held by society or a group of persons, of what is right and what is wrong or what is good or what is bad. When society classifies some human activity as wrong or bad, the logical question would be on what basis does society do that?

This question brings us to the well documented debate in Great Britain between Lord Patrick Devlin (Justice of the High Court, Queens Bench, 1948-1960 and Lord of Appeal, 1961-1964) and Prof. H.L.A. Hart (Professor of jurisprudence at Oxford

University, 1952-1968) that ensued over the Wolfenden Report.¹⁹ The debate was essentially about legal enforcement of morals in society. Lord Devlin takes a view that morality is a sphere in which there is public interest and there is private interest, often in conflict, and the problem is to reconcile the two with a toleration of maximum individual freedom that is consistent with the integrity of society (Devlin, 1959). Here, in order to retain the integrity of society, Lord Devlin has argued that the law has the right to curtail individual private activity if that activity is considered as detrimental to society by the 'majority', which is reflected in the opinion of any ordinary person (who could be picked up at random from the street and placed in the jury box). The source of a majority opinion is immaterial, as long as the reasonable man on the street believes that a practice is immoral (Devlin, 1959:46).

Prof. Hart questioned Lord Devlin's views. Prof. Hart argued that the legislator should investigate whether the majority moral opinion is based on ignorance, superstition, or misunderstanding. He argued that moral issues are both private and public, and certain issues may cause disgust and intolerance but if it is a private activity, it cannot be curtailed by law merely because it is disgusting or intolerant as it will result in curtailing individual liberty (Hart, 1963). To take the step of legal enforcement of a moral issue involving any human activity, Hart (1959:52) recommended two questions,

First, we must ask whether a practice which offends moral feeling is harmful, independently of its repercussion on the moral code. Secondly, what about repercussion on the moral code? Is it really true that failure to translate this item of general morality into criminal law will jeopardize the whole fabric of morality and so of society?

Thus, legal enforcement of moral standards is logical only when the moral standard itself has been investigated, and whose breach is likely to cause serious harm to society. Although moral standards are based on beliefs of individuals and society, in order to legally justify and enforce them, mere majority opinion can also amount to tyranny of the majority. A moral standard becomes suitable for legal enforcement only when its breach will jeopardize the fabric and existence of society. Whether a

¹⁹ The Wolfenden Report (1957) refers to a parliamentary committee report in Great Britain dealing with homosexuality and prostitution. It is a landmark report because it also queries the function of law itself while dealing with two very difficult legal and social problems of that period.

moral standard is reasonable or unreasonable is the study of 'ethics' as a body of knowledge. Ethics is the normative way of studying moral standards, in which, the normative study attempts to find out what ought to be the moral standard or state of affairs and why so, and if not, then why not? Morality and moral standards offer a choice between right and wrong but the justification for that right or wrong is found through the discipline of ethics.

The arguments in the Hart-Devlin debate and the concepts of moral standards and ethics are inter-related and sometimes used in an interchangeable manner. When applied to the human activity of corruption, one can safely conclude that is immoral and unethical since it fundamentally involves private gain at public cost. If left unchecked, corruption can lead to chaos and anarchy in society. Corruption also breaches the principle of distributive justice and undermines the fiduciary role of business as a custodian of societal wealth and resources. Moreover, corruption violates the utilitarian role of business to achieve the economic welfare of society. This logic has prompted the formulation of anti-corruption legislation both at national, regional and international levels to protect the economic interests of society and protect society from an immoral situation of private gain at public costs. Except for the situations defined by Abueva (1966), corrupt influence and acts of corruption are largely sustained through an intricate system of bribery (irrespective of the nomenclature), questionable payments and influence peddling against a *quid pro quo*.

Bribery:

Bribery is the act of providing incentives in exchange for an act of corruption. A bribe includes payments in cash or kind and can include provision of free goods or services and non-repayable loans. A bribe can also be termed as a gift or donation or bear any nomenclature denoting cultural customs and nuances but with a view to extract a corrupt act. Companies get around bribery legislation by donating money to a trust that the bribe-taker nominates as in case of Lockheed and Prince Bernhard of Holland where Lockheed made donations to the Prince's wildlife trusts in exchange for aircraft orders (Jacoby et.al, 1977) or by providing free goods, free services, scholarships for the bribe-taker's children for overseas study, payment of marketing commissions, payment of consulting fees to third parties nominated by the bribe-taker.

Bribes can be paid or provided before the task sought by the bribe-giver is done or it may be paid or given after the task sought by the bribe-giver is done. At times, bribe-givers and bribe-receivers claim legitimacy for their acts under labels of customs and cultural requirements. If the objective of any of these acts is to seek reciprocity and create a relationship or understanding of *quid pro quo* for private gain against public good, it is a bribe irrespective of the nomenclature used.

In the context of business and its interaction with the government (public officials) corruption occurs and bribes are paid or given by a business manager. According to Noonan (1984:23), “in a modern society corporate bribers may be more powerful than the officials they bribe” and the “bribe-takers are among the powerholders in society that is why they are bribed.” One (corporate executive) has the power to bribe and the other (public official) has the power to reciprocate with the discretionary powers of one’s office. The bribe given by a corporate manager to a public official is to achieve a favourable disposition and line of communication with the public official who has dispensing powers and whose dispensation is sought by the corporate. As Noonan (1984:697) clarifies, “The bribe is intended to reflect or create an overriding obligation. The briber pays because he (or she) feels he (or she) must reciprocate or must have reciprocation.” Noonan (1984:697) reiterates that, “Bribe is used today not only in its primary sense of an exchange with an officeholder, but in the sense of any inducement given to alter conduct that would naturally be otherwise.” Johnston (1997:62) explains the process that underlies this primary sense of exchange thus:

The initiative may come from either private clients or public officials: the first may offer bribes, the second may delay decisions or contrive shortages until payments are made, or may simply exhort them. The climate of corruption can be so pervasive that no explicit demands are needed: “everybody knows” that decisions must be paid for.

Once an understanding is reached, the bribe-taker is expected to reciprocate by way of a corrupt act in exchange for the bribe.

In case of bribe transactions involving large stakes there are inherent elements of ‘secrecy’ and ‘enforcement.’ Lambsdorff (1998:43) has analysed the element of secrecy involved in such bribe transactions in two ways i.e. (a) it has to be kept as a secret from the world at large to avoid public scandals and extortion (b) as a secret

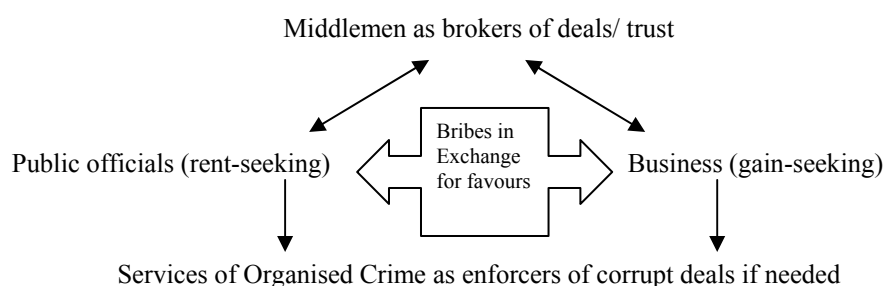
transaction known to only few within the organization under a safeguard that employees privy to the bribe transaction will not be able to skim off some of the bribe for their own. Lambsdorff (1998) writes about an employee of a German firm in Hong Kong who was given money and asked to bribe Chinese government officials. The employee diverted funds meant for bribing Chinese government officials to his personal account instead of delivering the bribe. Later, the company discovered that bribes were not delivered and it threatened the employee with prosecution. The employee, in turn, threatened to expose the company and the Chinese government officials involved and escaped prosecution.

When it comes to enforceability of a bribe, a bribe-taker is also conscious that the secret arrangement of reciprocity between the bribe-giver and the bribe-taker is enforceable by the bribe giver (though not in all situations). In event of non-performance by bribe-receiver, the bribe-giver (business) can use the services of others to ensure performance and may have access to other influential persons within the bribe-taker's organisation, or to organised criminals or command political influence. The bribe-giver can use a combination of all three or two of these to ensure compliance (on behalf of the bribe-giver) by coercing and intimidating the bribe-taker. Only in those instances where a bribe-taker is not afraid of such coercion by virtue of being more powerful than the bribe-giver can the bribe-taker risk non-performance in a corrupt transaction.

Dellaporta & Vannucci (1999:20-24) in their extensive study of corrupt exchanges in Italy between the networks of politicians, business, mafia and middlemen believe that corruption operates successfully because of a complex web of relationships between public officials (bribe-receivers), business cartels (bribe-givers), middlemen and organized crime that ensure "flow of information" (discretionary powers) in exchange for "money" (bribes) with the underlying element of "trust." Casual observation indicates that what has been observed in Italy holds true in other countries around the world in relation to the nexus of corruption. The main actors are the public officials (rent-seeking behaviour) and business (gain-seeking behaviour) with supporting roles played overtly by 'middlemen' who act as consultants or liaison agents brokering deals between the two (indicated by the double headed arrows in figure 1), with organized crime in the shadows to play a covert enforcement role paid for by the party

asking them to intervene (indicated by arrows in the figure) if it becomes necessary. The web of these relationships is depicted below:

Figure 1. The Nexus of Corruption



Bribes vs. Gifts:

Most people understand when a bribe is offered or demanded from them. Indeed, most nations around the world have words denoting a bribe in common parlance in their own language (see Appendix II). But, it is essential that a distinction be made between a bribe and a gift, because many bribes acquire the cloak of gifts within a cultural context. Noonan (1984:697) elucidates this distinction:

The key differences between a gift and a bribe are: a gift may be disclosed, a bribe must be concealed, the size of a gift is irrelevant whereas the size of a bribe is decisive, a gift does not oblige, a bribe coerces; a gift belongs to the donee; a bribe belongs to those whom the bribee is accountable.

These two words, *bribe* and *gift* form two ends of a segment, with a few related activities in between ranging from tips to cultural situations of gift-giving. Tips are used to influence conduct for future services and reward past services, however the distinction between a tip and a bribe can be determined from the size of the tip, its relevance to the service rendered or expected and the fact whether it can be disclosed or not. If the size of a tip is disproportionate to the service and it cannot be disclosed, it is a bribe (Noonan, 1984:688).

Gifts in a cultural situation express love, affection and exchanges during occasions in a context of personal relations (example: gifts exchanged at Christmas). The distinction between such a gift and a bribe can be made by examining whether love and affection exist within the cultural context claimed and furthermore, is it being concealed or disclosed. Even in instances of statutory disclosure such as campaign

contributions which can be made out of love for a political cause, the clue lies in pre-election or post-election campaign conduct of the donee (Noonan, 1984:621-51). If the donee reciprocates by a *quid pro quo* act, the campaign contribution is a definite bribe. The briber has sought in this case to secure a benefit of some kind from the office of the bribee. A gift always belongs to the donee (Noonan, 1984:697) once given by the giver²⁰, but a bribe belongs to the bribe-giver to whom the bribee is accountable for reciprocal performance of a corrupt act in exchange for the bribe.

A few centuries ago, in most countries around the world, gift-giving to people in power, especially monarchs, nobles, tribal chiefs and public officials, were an accepted and essential practice (Wraith & Simpkins, 1963). In Japan for instance during the Tokogawa (1603-1867) rule, written regulations existed prohibiting acceptance of bribes, but in practice merchants offered large gifts of gold to public officials, calling them “gifts in anticipation” and promised them a “thanks offering” (Mitchell, 1996:5) when the work was done. Today gift-giving to people in public office, especially large gifts of gold will be open to question and the act would be viewed with suspicion.

Gift-giving and taking is subject to cultural relativism in many places around the globe (Wraith & Simpkins, 1963) and such cultural relativism confuses and clouds the judgement of an observer. Certain cultural situations are accepted as ethically correct or moral within the society in question. A Middle-Eastern princess was beheaded for adultery in the Eighties. This was considered sound punishment for adultery in that particular society but if the same treatment were meted out to anyone (for adultery) in another society, it would raise a human rights debate. Such cultural relativism “is grounded in the assumption that a person or culture believing an act is morally correct, helps make it morally correct” (Donaldson & Dunfee, 1999:20). The fallacy of a relativist view is obvious; morality is linked to group or cultural belief and not to universal principles of ethics.

²⁰ There are exceptions, for example one of the principles used by diplomatic corps is that a gift must be accepted lest refusal give offence; but it is understood that the gift was made in an official capacity. The donee later hands the gift over to some worthy organization such as a charitable organization.

Managers with relativist views, when involved in an overseas gift-giving decision can use the test of disclosure to satisfy themselves and their critics that their act of gift-giving is being done to honour a local custom or culture of gift-giving. If managers feel that their act of gift-giving can be announced in the local newspapers without any adverse impact on the company's work or reputation in the host country, then it is a gift within the cultural context of that country. If managers are uncomfortable about local journalists learning about the gift, then it is certainly not a gift within that culture because announcement of gifts, which are culturally accepted, will not create an embarrassing situation for the company in that country or in that society. We come back to Noonan's (1984:697) distinction between a bribe and a gift: "a gift can be disclosed, a bribe needs to be concealed." To be called a gift, it has to pass the "test of disclosure with comfort" (Roy, 2001). It is important in such situations to provide disclosure as evidence confirming that the gift in question is culturally acceptable in the host country. Undisclosed gifts, hidden from the public eye, thus can be classified as bribes, irrespective of cultural arguments as they fail the "test of disclosure with comfort" in the host country.

Lobbying:

Lobbying is the promotion of individual or group interests by various means including dissemination of information to create a favourable disposition towards that individual or group. Businesses adopt lobbying, *inter-alia*, for creation of favourable public opinion and legislative opinion to obtain benefits by passage of favourable laws or repeal of unfavourable laws. Lobbying involves creation of favourable public opinion and/or legislative direction to serve group interest or individual interest of the lobbyists. It is achieved unnoticed, usually to the detriment of public interest or common good.

A lobbyist need not promise bribes nor pay a bribe; lobbyist influences situations, individuals or systems to make them favourably disposed towards the purpose of the lobbyist. Lobbying can occur through different means. One of the recognised forms of lobbying which is legally prohibited in USA is the "revolving door phenomenon." Revolving door situations are said to occur when "government officials leave office and join private firms that then bid on contracts from government agencies for which the officials formerly worked"(Rauch, 1997:113). In Japan, revolving door situations

known as *amakudari* (literally descent from heaven) are legally accepted (Rauch, 1997:113). Another form of accepted lobbying is use of public relations consultants who plan media publicity to create or sustain a favourable public image of the client company. Such public relations exercises are widely accepted and not prohibited.

Favouritism and Nepotism:

Favouritism can be an after-effect of successful lobbying activity by an interested group or individual. Favouritism can also occur not necessarily as a result of lobbying, but on account of considerations of friendship, kinship, nationality, ethnicity, ideology or plain prejudice. Favouritism is said to occur when the decision-maker decides in favour of specific group or individual interests by deviating from the established standards of decision-making. The rules are bent, the procedures are abandoned or the procedures are ostensibly followed with a premeditated decision in favour of a particular group or individual who would not otherwise have been the beneficiary by merit. Nepotism is a form of favouritism. Abueva (1966:534) defines nepotism as arising from “kinship claims” in certain cultures and is expanded to include “non-kin on the basis of other personal or partisan considerations” (Abueva, 1966:534). Nye (1967:567) defines nepotism as: “bestowal of patronage by reason of ascriptive relationship rather than merit.” Nepotism, therefore, is a form of favouritism influenced by relationships between the concerned parties (example: Contracts given to a minister’s relative without inviting bids).

Marketing Commissions as bribes:

Some marketing commissions have been used as a sophisticated version of bribery (example: Lockheed). Such commissions are paid to either the direct beneficiaries or their middlemen. These payments are not declared in public and statutory documentation, nor are they mentioned in agreements available for public scrutiny. These payments are made either in cash or in the form of providing free goods, services or non-repayable loans or amounts paid into numbered bank accounts (in any of the tax havens). Bribes of this nature are labeled as marketing commissions or bear any nomenclature to hide the nature of payment. Lockheed Corporation made such payments from a “market contingency fund” as Lockheed called it. Lockheed used its “market contingency fund” to pay Saudi Arabian middlemen in order to win the deal to supply planes to Saudi Arabia (Sampson, 1977:198). Such commission payments

frequently occur in transactions involving sale of arms; sale of airplanes (example: Lockheed aircraft sales in Japan and Indonesia), both civil and military airplanes; construction tenders; and aid spending by donee country. Secrecy from the public eye and non-disclosure in statutory documentation are the key features of such bribes. For example in case of Lockheed's aircraft sales to Saudi Arabia, three different contracts were discovered for the same transaction in course of investigations and obviously all three were not public documents (Noonan, 1984:659).

Facilitating payments:

Multinational companies while doing business in a foreign country encounter situations when they have to either pay a bribe or suffer business losses, property losses and even loss of human life due to non-payment. In those countries where political corruption is rampant at all levels, it becomes a part of a multinational corporation's business agenda to take care of public officials. Payments have to be made at every stage of business conduct right from securing permissions to do business in that country to everyday functions dealing with various administrative departments who can interpret laws, rules and regulations in ways that harass the company. Usually petty officials will find fault with day-to-day rules ranging from hygiene, employee welfare, working conditions, export/import documentation and packaging, to bank permits for repatriation of profits to anything that can be done to hinder smooth business operations. These situations are typically called rent-seeking behaviour (Bhagwati, 1982; Bardhan, 1997) and require multinational businesses to pay or else suffer time delays, losses and, at times, threat of closure of operations. These are situations in which the bribe-taker demands bribes by virtue of one's position or public office and the bribe-giver has to give in as a matter of commercial prudence and practicality. For instance, in a country where the corrupt sub-systems operate (Ryan, 2000) as a part of one's daily life an importing company may find it difficult to clear a simple import consignment through the customs department without paying the standard facilitating payment for clearance of documents (experience of the author in India). In a situation where the consignment to be cleared comprises of perishable produce or goods, the rent-seeking behaviour of petty officials in the customs department becomes more pronounced, predatory and extortionate.

Extortion:

Payments made under necessity or grave compulsion need to be distinguished from the bribes explored above. If the bribe-taker is in the position to oppress and cause physical harm to the bribe-giver, the act should more appropriately be termed extortion. The bribe-receiver becomes a collector of bribes by virtue of his or her power to oppress, harm or injure. In such situations the moral responsibility is with the bribe collector or the extortionist and not the bribe-giver paying for peace and protection. This applies to companies as much as to individuals. Payment of protection money to organised extortionists (ranging from politicians, administrators to crime syndicates and terrorists) is not uncommon in many countries. It is similar in some ways to buying insurance to protect corporate property and lives of one’s employees as much as to ensure the survival of the business. Occurrence of extortion indicates serious political and administrative failure on part of the national administration.

Corruption: Active vs. Passive:

In any given corrupt transaction, either the bribe-giver initiates the corrupt act or the bribe-receiver initiates the process of corruption, or both participate as in a courtship process. During the corruption courtship between the bribe-giver and the bribe-receiver, neither party spells out in clear terms one’s intentions, but both parties go through the motions of discussing and doing everything else without the bribe-receiving party completing the transaction till the bribe exchanges hands. From a multinational manager’s perspective there could be two situations (active or passive) as in figure 2:

- a) When the manager initiates the process of corruption or the corruption courtship
- b) When the manager faces demands from a corrupt system, group or an individual

Figure 2: Active and Passive Corruption (Source: Roy, 2001:23)

Bribe-giver is:	Initiator	Compliant
Bribe-receiver is: Initiator		Passive corruption
Compliant	Active Corruption	

As an initiator of the corruption process, the manager's role as a bribe-giver is pre-meditated and therefore it amounts to "active corruption" (Roy, 2001:23). Every business manager who initiates the process of corruption, be it bribery, lobbying, undisclosed gift-giving or offering facilitating payments without a demand, is involved in active corruption. In those cases where the manager responds to the demands of a bribe-seeking system, or a group or an individual, the manager is a passive participant and is said to have involved in "passive corruption" (Roy 2001).

This distinction between active and passive corruption clearly states and reveals the role chosen by the multinational business managers in a corruption-related situation. "Business has the power to uplift, business can also corrupt and damage" (Donaldson & Dunfee, 1999:25), therein lies the difference in the intent and role chosen by the decision-making manager. The distinction between active and passive corruption will help us re-define the meaning of corruption for a multinational business manager. This new definition is much wider than all the existing definitions and it takes into account the power of business to uplift and respect stakeholders or the choice of business to ignore stakeholders and inflict damage or destruction by corrupt acts.

Redefining Corruption for the 21st Century Business Manager:

Corruption from the perspective of today's business managers can be redefined as: *A phenomenon that involves illegal, immoral gratification in cash or kind in exchange for securing an unethical advantage over others in business and/or in society.* The word 'unethical advantage' in the above definition refers to corrupt acts that lack justification from a stakeholder perspective. Corrupt business conduct has the potential to undermine human rights, democracy and sustainable development, amongst other stakeholder obligations. The explicit mention of human rights and sustainable development is essential to the core of all stakeholder commitments that any business operation has to honour in today's global society. It is the core social clause in the contract between business and society which business has to honour (Donaldson & Dunfee, 1999).

The corrupt advantages sought by multinationals over others in business and/or society can manifest itself in various forms, such as bribes paid to win commercial tenders and contracts, obtaining of promotional articles in return for paid

advertisements, bribes paid to escape legal obligations to more serious situations. These could include usage of political influence for passage of favourable legislation by governments, installation of favourable governments both civil and dictatorial, and result in wilful damage to means of livelihood, wilful damage to the environment, compromising on human right issues and issues linked to sustainable development.

Redefining corruption to include stakeholder issues will help us analyse inherent shortcomings of well-intended anti-corruption guidelines of the OECD as we shall see later in this thesis. It will also help us understand the concept of CRDM (Corruption-related decision-making).

CRDM or Corruption-related Decision-making:

Corruption-related decision-making by a business manager is an orderly way of thinking through the moral implications of any decision in the realm of corruption and bribery. Corruption-related decision-making or CRDM is a new concept in strategic management thought whose purpose is to consciously protect stakeholder issues during decision-making in corruption-related situations and not jeopardise stakeholder issues ranging from fundamental or universal human rights, to sustainable development. Conduct of business cannot and should not lead to outcomes of human suffering, degradation of the environment, loss of means of livelihood or any such outcome that will mean a legacy of pain and regret for us and our future generations.

Although, it is said that the business of doing business is business and sustained profit outcomes are essential for the continued survival of business, its very existence is also dependent on the continued goodwill and acceptance of business operations by society. Business cannot and does not operate in an isolated sphere, but within society. If society rejects the actions of business, sooner or later business will find it difficult to sustain profitability and survive. A good example of such a situation was the entry and demise of Enron in India discussed in chapter six. Corruption-related decision-making thus comes under the domain of business ethics and corporate strategy, both long-term and short-term, and it is concerned with the continued success of a corporation.

CRDM and Ethical Decision-making:

Corruption-related decision-making differs from ethical decision-making by addressing the ethical dilemmas in corruption-related situations between economic objectives, the business environment and stakeholder issues. The general process of ethical decision-making is concerned with the concept of right and wrong. However, in a corruption-related situation (such as paying a bribe to secure a business contract) when the company's economic interests are in question, one's decision about whether to take part in a corrupt act or not, is usually evaluated in terms of the economic impact on the company and not in terms of what is right and wrong. For instance, CEOs in India acknowledged in 1993 that their companies constantly engaged in bribery and payoffs and they justified their actions on grounds of "extortion" (by the Indian government officials) as they were "forced to bribe" (Donaldson & Dunfee, 1999:226). Thus, these business managers did not see it as a matter of right or wrong but as a matter of their business environment that forces them to pay a bribe or take part in corruption. This argument was also offered in the infamous Lockheed case and by 500 US companies who confessed to overseas bribery (under amnesty) before the US Senate during the seventies (Jacoby et al., 1977).

In those cases where a company possesses an ethical frame of mind and refrains from a corrupt act once or twice or on numerous occasions because it is ethically wrong to do so, but as a consequence loses business and suffers the economic impact of their honest policies, the decision-making managers in question may become bitter and disgruntled. Later, they may get tempted by the business environment around them and start participating in corrupt acts because every one else is doing it and they have to do it to survive (this is a timeless argument noticed in literature dealing with bribery scandals eg: Sampson, 1977; Jacoby et. Al, 1977; McClean & Elkind, 2003). This was also observed in the survey of multinational companies at Mumbai, India (discussed in Chapter seven). Thus, in order to achieve the economic objectives, the very same company may enter into corrupt transactions with the justification that other companies are doing it or it is the norm of doing business in country 'x' or country 'y'. It is in such cases where the companies are ethically pre-disposed but suffer from a dilemma between ethics and economic gains that CRDM takes over and provides the decision-maker an opportunity to check whether a corrupt act on part of

the decision-maker has the potential to negatively impact human rights, environmental issues, sustainable development or any other stakeholder issue.

If one establishes as a result of the CRDM process that the decision is going to adversely affect stakeholder issues then the company withdraws from such a situation. It is in such situations, when a company has withdrawn under the most difficult business conditions, the company will succeed in sending a message (both within and outside their organization) that the company will never do anything to jeopardize critical stakeholder rights as some things will never be done and should never be done. As a result the company may suffer economic consequences but the company will have created a moral fabric within the organization, and displayed moral courage to its outside environment, thus communicating and setting an ethical standard where it did not exist. On the other hand, when there are no prospects of negative stakeholder consequences under the CRDM process in a particular corrupt transaction, if the company is forced to take part, then there will be a sense of justification for the company's participation.

CRDM may also work in cases where a company did not possess an ethical company culture but has suffered from a public scandal and wants to recover its public image and status by changing its organizational culture. Adoption of a CRDM process will help in such a situation.

Chapter Two: Good governance and the CRDM process

Introduction:

In the previous chapter, the concept of corruption was explored and redefined from the perspective of a decision-making manager. There is no doubt that corruption in general has the potential and ability to impact society in many ways (Mauro, 1997; Mauro, 1998; Gupta, Demello, Sharan 2001; Gupta, Davoodi & Tiongson, 2002; Leite & Weidmann, 2002; Tanzi, 1998). Corruption in business plays a hidden role in many corporate decisions either because of an external situation (bribe demands faced by the company) or an internal motivated organizational culture of success at all cost (example: Enron's dealings). Therefore, while dealing with corruption-related situations managers need to enlarge the frame of reference of their "positional objectivity" (Sen, 2002) to include the serious possibility of stakeholder rejection and closure of business as a consequence of their corrupt acts. When stakeholders reject a company on ethical grounds, the company is likely to ethically fall in the eyes of society, losing "reputational capital" and may suffer serious consequences including closure of business (Sims, 2002). This is the decision-making challenge posed by corruption and corruption-related situations to all decision-making managers. The answer to such challenges is adoption of a CRDM process that demonstrates stakeholder commitment and protects one's strategic interests. It is in this context that good governance is being discussed in this chapter vis-à-vis the current international laws dealing with corruption. Good governance in the area of corruption in business can be achieved by moving from a narrow legal compliance approach to ethical decision-making.

What is Good Governance?

The term good governance, as part of both public sector (government) and corporate communication, is used to convey best practices adopted by an organisation in all its aspects of functioning. The term good governance is also being increasingly used to convey the concept of compliance with stakeholder issues by companies, but in practice it remains largely an exercise of compliance with the existing statutory requirements (Kaushik & Dutta, 2005:1). This is evident from the results of a survey carried out by Price Waterhouse Coopers (PwC) and Economic Intelligence Unit

(EIU) in April 2004 to study the effect of compliance on performance of financial institutions. The survey findings reveal that financial institutions “equate effective corporate governance with meeting the demands of regulators and legislators” (Kaushik & Dutta, 2005:10). The adoption of a compliance approach with current law by institutions does not help them strategically pre-empt the negative impacts of their decisions (if any) on stakeholders, in areas that can prove to be critical to the continued success of an institution. One such area in corporate decision-making relates to transactions/ decisions where paying a bribe or entering into a corrupt act is an underlying act or an incidental act to secure a commercial transaction. Such decisions to pay a bribe or enter into a corrupt act are justified in the economic interest of the company, but such transactions/decisions may sometime have the potential to harm serious stakeholder interests in the areas of human rights or environment. Besides, pursuance of economic success through such activities or transactions is likely to create an organizational culture such as Enron’s.

Sims (2002:174) observes that Enron collapsed as a result of decision processes that evolved from erosion of ethics within the company. The culture at Enron “ate away at the company’s ethical boundaries, allowing more and more questionable behaviour to slip through the cracks” (Sims, 2002:174). Good governance therefore cannot be limited to satisfying statutory minimums and accounting standards, but needs to create an ethical framework of action and a company culture that goes beyond the minimum compliance approach. The idea is to achieve twin goals of stakeholder satisfaction and sustained growth of the company, especially when one is faced with decisions in the conduct of business where corruption and bribery seem necessary to secure economic success. The law is what society thinks are minimal standards of conduct and behaviour (Sims, 2002:22) but to achieve good governance one needs to extend one’s vision beyond the current business law dealing with corruption. This is so because new business laws come into existence as a result of financial scandals, ethical misdemeanours and corporate failures and usually as a matter of hindsight but not as a matter of foresight.

Wharton legal studies Professor Philip Nichols believes that, “the most useful action a business can take is to *really understand corruption, and to create and articulate a*

general response to corruption before it encounters difficult situations.”²¹ Thus, corporate good governance has the scope to look beyond compliance of current law to discharge the responsibility of a corporate citizen towards the society in which it functions.

Reed (2002:238) has explored the re-conceptualisation of current corporate governance models. He distinguishes between a shareholder governance model and stakeholder governance model and advocates responsibility towards “development of a nation” as an essential aspect of a new model of corporate governance, especially in developing countries. He argues that reform processes need to be reviewed in terms of the impact that they have on society.

In case of corruption as a governance issue, the OECD in its set of ‘Principles for good Corporate Governance’, 1999 and ‘Revised Principles, 2004’²² has included the ‘Protection of Stakeholder rights’ and the ‘Role of stakeholders in Corporate governance’ respectively (Kaushik & Dutta, 2005:20-21). However, the OECD Principles of good Corporate Governance, the OECD anti-bribery Convention, 1999, and other prominent anti-corruption conventions at the international level are not sufficient to ensure protection of stakeholders’ issues such as human rights and the environment in corruption-related situations (Appendix III provides a list of current international and regional legislation/ Conventions against corruption in business).

Current International Law and Conventions against Corruption in Business

Background:

Bribery and corruption in international business and its magnitude came to public limelight during the Lockheed investigations in 1975. During these investigations, senior Lockheed executives admitted that they had paid bribes in 41 countries out of the 70 countries where Lockheed sold its aircraft (Jacoby et al., 1977). Besides Lockheed, about 500 US companies came forward (under amnesty) admitting that bribes were paid by them to secure business overseas (Noonan, 1984). As a result of

²¹ <http://knowledge.wharton.upenn.edu/arti...> accessed on 19/02/2003

²² Non-binding on any country except that all OECD member countries have signed the set of principles.

these confessions under amnesty, the United States passed the Foreign Corrupt Practices Act (FCPA), 1977 prohibiting US companies from paying bribes overseas. French and German companies could still pay bribes overseas to secure business and claim the bribes paid as legitimate tax-deductible business expenses. Thus, US companies bidding for business overseas business found themselves in a situation of competitive disadvantage (Jacoby et.al, 1977). In 1979, the United States attempted to table a convention at UN to declare bribery in international business as illegal, but the proposal was turned down by other member nations (Pieth, 1999) as “most trading partners did not endorse the US proposal to end tax deductibility and to impose legal sanction” (Lambsdorff, 1998:41).

During the 1990’s there was a growing awareness about the negative impact of corruption on developing economies (Mauro, 1995; Mauro, 1997; Mauro, 1998; Klitgaard, 1988; Theobald, 1990). This was coupled with sustained efforts of NGOs such as the Transparency International (formed in 1995 by Peter Eigen, a former World Bank official who was appalled by corrupt use of aid funds by African rulers and business corporations during his posting in Africa). Accordingly, the issue of corruption and bribery in international business kept coming up on the agenda of the United Nations, World Bank, IMF²³, OECD²⁴, and a few other regional and international organisations. These organisations served as platforms for deliberation between nations, which resulted in the creation, and passing of some significant anti-corruption conventions at regional and international level.

Anti-corruption legislation: national and supra national

The efficacy of new legislation in any democratic society is tested in the actual prosecution of cases. New legislation is then subject to review and amendment if it does not meet the aspirations intended in the piece of legislation. National level legislation is based on certain culture-specific and historical antecedents and this gives rise to domestic rules of prosecution. Anti-corruption legislation at the national level is subject to the same process and is enforced through domestic rules of prosecution. One of the major aims of such anti-corruption legislation at the national level is to prevent corruption and punish it where discovered. The jurisdiction of

²³ International Monetary Fund

²⁴ Organisation for Economic Co-operation and Development

national level anti-corruption legislation extends largely to domestic occurrences of corruption. However, in case of US companies, the US FCPA (Foreign Corrupt Practices Act, 1977) applies to the overseas activities of US companies.

Anti-corruption legislation at the supra national level is an expression of commitment between signatory nations to a path of eliminating corruption over a period of time through a variety of co-operative processes. The OECD Convention against Bribery is one such instrument, which to be effective, has sought (through the articles of the Convention) to achieve a “functional equivalency” of anti-corruption legislation between the articles of the OECD Convention and various national level legislation of signatory nations (Pieth, 1999). In practice, it has proved difficult to achieve functional equivalency because (i) domestic rules of prosecution differ between nations (ii) definitions of certain terms, including the term ‘offence’ in the OECD Convention and national level legislation differ (Pieth, 1999).

National and Supra national legislation have to also deal with various groups interest and political lobbying. In particular supra national legislation faces substantial delays due to the entire consultative nature of the process between nations. Pieth (1999:9) observes that international anti-corruption legislation is intended to motivate corporations to change their attitude more than prosecute them criminally. This appears to be a significant deviation at the supra national level as opposed to the usual intent of anti-corruption legislation at a national level.

Regional Anti-corruption Conventions

Anti-corruption efforts in the form of Conventions against corruption started as a regional effort with the OAS²⁵ organising the first International Anti-Corruption Convention in 1996. The Convention²⁶ came into force on March 6, 1997 with 31 ratifications out of 32 member states. The Convention covered both sectors i.e. public and private, provided a wide interpretation of corruption offences, money laundering, recovery of assets. The agreement was of a regional nature, but its 28 articles covered, *inter alia*, transnational bribery (article 8), doing away with property, bank secrecy in course of investigation (article 15,16), domestic law in member nations to establish

²⁵ Organisation of American States comprising of 32 member states

²⁶ www.oas.org/juridico/english/treaties/b-58 accessed on 22/07/2005

criminal offences (article 7), and introduced many preventive measures to ensure good governance on part of the State, as regards its public officials such as whistleblower protection, declaration of assets in public office, public sector standards of conduct, government revenue collection and control systems. The Convention also denied tax deductibility of corruption-related expenditures incurred by business (article 3, clause 7). In its preamble, the Convention recognised the connection between corruption and organised crime (as in Della Porta & Vannucci, 1999 discussed in chapter one) as well as the need to safeguard democracy, moral order and justice. However, it lacked specific standards of sanctions on businesses that were involved in transnational bribery and did not relate the impact of corruption in business to specific stakeholder issues such as human rights or issues of sustainable development. More regional anti-corruption conventions followed in Europe during the 1990s, namely Council of Europe (Criminal Convention), 1998²⁷ and Council of Europe (Civil Convention), 1999.²⁸ The first convention comprises of 42 articles covering active bribery and passive bribery (articles 2,3,5,6) of both domestic and foreign public officials, bribery of judges and officials of international courts (article 11), bribery of officials of international organisations, trading in influence (article 12), money laundering proceeds of corruption (article 13), protection of whistleblowers and the concept of private to private corruption (i.e. between two or more business entities or within a business entity) but this convention is yet to be ratified (as on August 2004) by 15 major member nations including France and Germany.

The second convention with its 23 articles is the first anti-corruption convention dealing with civil law aspects of corruption on parties affected by it. The Convention provides for compensation for damage caused by corruption and responsibility of state for a public official's corrupt behaviour (article 3, 4). The Convention also deals with limitation periods (article 7) and provides a broader definition of corruption. However, neither of these anti-corruption conventions specifically deals with situations of business corruption and its impact on human rights and issues of sustainable development (except that the Council of Europe (Civil Convention), 1999 provides for compensation to be paid to affected parties). As on August 2004, this Convention has not been ratified by 17 member nations.

²⁷ <http://www.u4.no/themes/conventions/cocrimconvention.cfm> accessed on 22/07/2005

²⁸ <http://www.u4.no/themes/conventions/coecivilconvention.cfm> accessed on 22/07/2005

The most recent regional anti-corruption convention is the African Union Convention on preventing and Combating Corruption, 2003.²⁹ It is an instrument of regional consensus dealing with prevention of corruption, criminalisation of corrupt acts and asset recovery process. The convention has 28 articles with provisions to deal with the region's realities namely: fight against corruption and related offences in the public sector (article 7), illicit enrichment (article 8), minimum guarantees of a fair trial (article 14), extradition (article 15) and related issues such as international co-operation for extradition, assets recovery (article 16 and 17) and the most significant being funding of political parties (article 10). This is the only anti-corruption convention dealing with corruption and funding of political parties. The Convention is yet to be ratified by the minimum number of African nations (15 signatories required) to bring the convention in force.

The OECD Convention: Good Governance and Economic Development³⁰

The OECD Convention for Combating Bribery of Foreign Public Officials, signed by 34 nations came into effect on February 15, 1999. The 17 article Convention "criminalises active bribery of foreign public officials" and lays down guidelines for signatory nations to adopt and implement within their national legal infrastructure. These signatory nations control 70% of exports and 90% of foreign direct investment worldwide (Pieth, 1999). The objective of the OECD Convention is to reduce or eliminate bribery in international business conduct. The purpose is to achieve good governance, economic development and fair competitive conditions in international business. The preamble to the convention document states:

Bribery is a widespread phenomenon in international business including trade and investment, which raises serious moral and political concerns, undermines good governance and economic development, and distorts international competitive conditions.

The preamble of the OECD convention has identified "good governance and economic development" as issues that are sought to be protected by the convention. Although these objectives provide a good general starting point for fighting corruption and bribery in international business, "good governance and economic

²⁹ www.africa-union.org accessed on 18 September 2004

³⁰ <http://www.oecd.org/document> accessed on 22/07/05

development” do not by themselves ensure that human rights will be protected, nor that sustainable development (explicit goal of the United Nations) will be considered vis-à-vis economic development (mentioned in the preamble of the OECD Convention). This further underscores the need to re-emphasise the role of corruption in undermining human rights and sustainable development in certain situations.

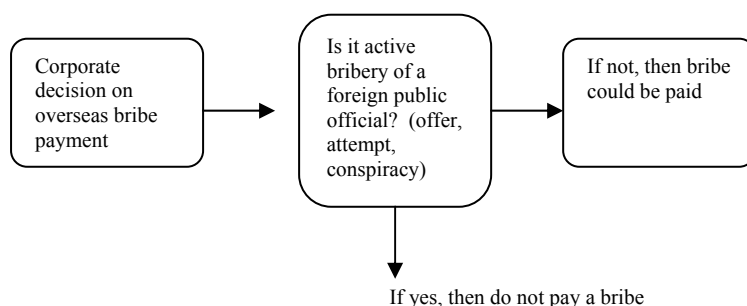
The seventeen article OECD Convention criminalises active bribery of foreign public officials and uses words such as ‘offer’, ‘attempt’ and ‘conspiracy’ in the first article of the convention to define the offence of active bribery but the Convention and its articles fail to cover passive bribery, private to private corruption³¹, compensation for parties affected by corruption, responsibility of state for corrupt behaviour of public officials, whistleblower protection, funding of political parties.

It appears that the OECD Convention has been reduced to a public relations exercise on part of the major trading nations without any impact on the corruption-related decision process in business. This is evident from the results of the first Bribe Payer’s Index (BPI), 2002 published by Transparency International after the OECD Convention came in force (see appendix I). The results indicate that the propensity towards overseas bribery has not gone down after the OECD Convention. The BPI, 2002 is based on a survey (the largest so far) of 835 business experts in 15 emerging market countries. They were asked: “In the business sectors, with which you are most familiar, please indicate how likely companies from the following countries (names of countries were listed) are to pay or offer bribes to win or retain business in this country?” The BPI 2002 indicates that companies from countries that are signatories to the OECD convention are not behind in bribery nor has the criminalisation of bribery been a deterrent to these companies or their executives. Companies from USA, Japan, France, Spain, Germany, Singapore and United Kingdom are involved in paying bribes. Companies from Russia, China, Taiwan and South Korea show the highest propensity of bribe payments in emerging market economies. Peter Eigen, Chairman of Transparency International remarked, “our new survey leaves no doubt that large numbers of multinational corporations from the richest nations are pursuing a criminal course to win contracts in leading emerging market economies of the

³¹ Private-to-private corruption has been defined in UNCAP, 2003 and refers to corruption within the private sector.

world.”³² The survey revealed that only 19% of the 835 respondents were aware of the OECD Convention criminalising bribery, implying that 81% of these business experts were not aware of its existence. However, even if a company were aware of the OECD Convention and intended to comply with the requirements of the OECD Convention it would be sufficient for a company to follow a decision-process as under:

Figure 3: The Statutory Minimum Compliance Model or the OECD Compliance Model:



Hence, if a company were involved in any other form of bribery overseas then they would arguably have complied with the minimum requirements of the OECD Convention. Such a company can also escape prosecution in a maze of laws pertaining to jurisdiction and rules of evidence in most countries who are not signatories of the OECD Convention. As is evident from the above, such compliance if it is used as a measure for good governance by any corporation, would actually amount to weak governance. There will remain a scope for stakeholder dissatisfaction and unethical behaviour in situations of private-to-private corruption (Argandona, 2003) or in situations of passive bribery (as discussed in chapter one). Generally, ‘good governance’ in corruption-related situations cannot be mere compliance with the law; it also needs to consider stakeholder issues and the company’s strategic interest within the framework of corporate social responsibility.

The UN Convention Against Corruption, 2003 (UNCAP)³³

This is the most significant anti-corruption convention by far, with the largest number of signatory nations and participant nations. The Convention has been signed by 111 nations and is open for signing to all nations and regional economic organizations. In

³² www.transparency.org...ses_archive/2002

³³ www.un.org accessed on 22/07/2005

its preamble the Convention acknowledges that corruption is a threat to democracy, stability and security of societies, ethical values and justice. It recognizes the link between corruption and organized crimes and declares corruption as a global issue that requires a multi-disciplinary approach with international co-operation to prevent and control it. The 71 article Convention provides an exhaustive coverage by far, of issues relevant to the public sector and public officials ranging from relevant definitions, jurisdictional issues, preventive anti-corruption policies and practices (article 5), preventive anti-corruption bodies (article 6), public sector (article 7), Code of Conduct for Public officials (article 8), public procurement and management of public finances (article 9), public reporting (article 10) to abuse of functions (article 19), illicit enrichment (article 20), laundering of proceeds of crime (article 23), obstruction of justice (article 25), freezing, seizure and confiscation (article 31), protection of witnesses, experts, victims (article 32), whistleblower protection (article 33), co-operation between nations (article 38), between law enforcement agencies (article 37), international co-operation (article 43), extradition (article 44), joint investigations (article 49), assets recovery process (article 51, 52, 53, 54,55, 56) .

From the perspective of corruption and bribery in the private sector this Convention provides an exhaustive coverage of provisions covering accounting, financial issues and governance issues (article 12), denying tax deductibility for bribes paid (article 12), bribery of national public officials (article 15), bribery of foreign public officials and officials of public international organizations (article 16), trading in influence (article 18), bribery within the private sector (article 21), embezzlement of property in the private sector (article 22), liability of legal persons and natural persons in charge of the legal persons (article 26).

Like all previous anti-corruption conventions, this one too fails to explicitly mention the link between corruption (both in business and in public life) and human rights, although the preamble does make a passing reference to the issue of sustainable development. Articles 34 and 35 deal with the consequences of corruption (without any mention of the issue of human rights or sustainable development) and provide compensation for damage due to corruption. This seems to imply that human rights abuse victims can institute damage recovery proceedings against erring companies

and company executives, which can be of the highest strategic significance to a company.

The Relevance of anti-corruption Conventions to business decision-making:

These anti-corruption conventions and the exhaustive coverage of corruption-related issues within them are testimony to the incidence of corruption and bribery and the far-reaching consequences of corruption. Most of these conventions have provided frameworks to signatory nations to amend and adapt their local laws to the articles in these conventions. The prerogative to amend laws and bring them in tune with the conventions rests with the nation in question and many nations are still bogged down by the failings of their own legal system. Between individual nations, extradition agreements and jurisdictional issues need to be streamlined before the articles in these conventions acquire some teeth.

It is also worth noting that the two biggest emerging economies i.e. China and India are not signatories to the OECD Convention. While China has signed the UN Convention, India has not signed the UN Convention though it had sent a team to participate in the Convention. In that context, it is worthwhile to note that no regional anti-corruption convention has occurred in the continent of Asia.

None of these existing conventions recognize the incidence of facilitating payments of small amounts, a reality of everyday life in many countries around the world. Therefore, from the perspective of a decision-making manager dealing with a corruption-related situation, there is still plenty of scope for a manager or a company to escape accountability in the maze of current anomalies in law and jurisdictional issues. From the perspective of a multinational company or a decision-maker one can adopt an ethical decision-making process or take advantage of the nascent stages of anti-corruption legislation. If one chooses the later, citing economic imperatives and ignoring stakeholder issues, then one obviously risks reputational capital and survival of the company as Enron and Shell did.

Good governance is ethical decision-making

Empirical research has not been undertaken to estimate the propensity of multinational companies to pay bribes that can lead to a compromise of human rights

issues, environmental issues, and endangerment of sustainable development and means of livelihood. The researcher's task becomes difficult in conducting empirical studies of the decision-making process in corruption-related situations because of inherent difficulties in obtaining accurate data and operationalising it. Klitgaard (1988:ix) admits these difficulties in relation to any empirical corruption research when he writes, "data are scarce, and the literature is tentative and thin, with few theoretical frameworks, international comparisons or careful case studies." Perry (1997) too mentions about similar difficulties in methodology. The only significant empirical studies that one can refer to are the annual indices of corruption and bribery published by Transparency International such as the Bribe Payers Index (BPI) and Corruption Perception Index (CPI). The BPI was first formulated and published by Transparency International in 1999. It ranks 19 leading exporting countries in terms of their propensity to pay bribes (See appendix I for the last published Bribe Payers Index) in course of doing business.

However, there are many cases in literature such as Enron and Shell that confirm the connection between corruption-related situations, decisions and human rights and environmental violations (discussed in Chapter six). Shell was the most profitable company on earth while Enron was a global success in the field of utilities but both failed in their stakeholder commitments (human rights and sustainable development issues) and later failed to do business in those parts of the world where they faced stakeholder rejection of their corrupt practice. In academic literature we may not come across such cases on a daily basis but the incidence of corruption in international business is not disputed as is evident from the media headlines summarized and emailed by Transparency International to members on its mailing list every working day of the week.³⁴

As Goodpaster (1991:270) writes, "mere compliance with law can be unduly limited and even unjust." Civil society and the law are struggling to cope with the role played by the omnipresent nexus of corrupt politicians, business and organized crime (Della Porta & Vannuci, 1999). "Corporations are not solely financial institutions; fiduciary obligations go beyond short-term profit and are in any case subject to moral criteria in

³⁴ www.transparency.org

their execution” (Goodpaster, 1991:270). Global pluralism of ethics is not possible on all issues, but there are fundamental issues such as human rights that are critical to the very survival of civil society and in turn the long-term operation of any business enterprise. The law and fear of punishment by itself may not be the only way to ensure a corruption free business world. Accordingly the CRDM process ought to be considered a part of strategic management thought process empowering a review of a decision-maker’s persona in the decision-making process.

Chapter Three: The Dynamics of Corruption and the need for an Ethical Decision-making model

“Well designed instruments are needed, to make ethical intentions operational in real-life business relations” (Luijk Van Henk, 2000:3)

Introduction:

As mentioned in the previous chapter, good governance as a practice cannot occur without ethical decision-making in corruption-related situations and that in turn cannot occur without a review of oneself while making such decisions. This chapter examines the dynamics of corruption in business represented by the factors that influence decision-making in corruption-related situations, the position from which a decision-maker operates in such situations, and a decision-maker's mental model in terms of the likely exchange and psychic utilities operating at the individual decision-maker's level.

The key to an effective internal review of a decision-maker's persona is in disrupting the dynamics of corruption operating in business on oneself through ethical decision-making. In order to do so, a contextual meaning has to be given to the decision process in terms of the company and its environment as well as the decision-maker's responsibilities to society. Only then can we bring about a transition in a decision-maker's responses from a prudential and commercial individual to an individual of mixed motives to include prudential and commercial aspects accompanied with moral commitments and altruism.

Factors in a corruption-related decision

Roy & Singer (2004); Roy & Singer (2005) have argued that at an individual level powerful psychological factors come into operation, in any corruption-related context. Securing of a single contract or a bid may be crucial for a manager's career advancement or the company's performance (as indicated in the famous Lockheed testimony of Carl Kotchian). In such circumstances, decisions by individuals are often based on a narrowing perception akin to panic. The decision-maker is not likely to thoroughly consider all consequences, nor reflective or deliberative forms of rationality associated with ethics and ideals, in such situations. Whenever a manager is faced with the question of whether to participate in a corrupt transaction or not, the

decision-maker is likely to rely on economic rationality more than anything else as is evident from the following factors that operate in practical business situations:

a) *Fear of Loss of Business:* During the Lockheed hearings in 1975, both Lockheed and its competitor, McDonnell Douglas conceded that each feared the other would be bribing to secure business (Sampson, 1977; Jacoby et. al, 1977). This view also found support in the survey of multinational companies at Mumbai, India (discussed in chapter seven). 89% of the companies surveyed feared loss of business when solicited bribe was not paid by them. 63% of the companies surveyed, when asked whether they lost business when they did not pay a bribe, confirmed they had lost business. Another 22% confirmed that they lost business at times when they had not complied with bribe demands as against only 7% who said they had never lost business when they did not comply with bribe demands. In the same survey, it was revealed that the companies who had lost business due to non payment of bribes ended up paying bribes and did succumb to the rent-seeking system in India (Bhagwati, 1982; Bardhan, 1997) in order to secure business.

b) *Personal Career advancement and Stock options:* At Enron, the culture of ‘success’ at all cost, inspired by Jeff Skilling and Ken Lay made Enron executives at all levels push ethical boundaries in pursuit of success (Sims, 2002; Prashad, 2002; McClean & Elkind, 2003; Swartz & Watkins, 2003). Enron executives had their eyes on stock options and career advancement as they took one corrupt decision after another (McClean & Elkind, 2003). For instance, Rebecca Mark was rewarded a 20 million dollar bonus for her handling of the problems encountered with the Dabhol project in India (McClean & Elkind, 2003). Later, the stakeholder community at Dabhol accused Enron of corruption, bribery and human rights violations.³⁵ Securing a contract or a bid or getting a project working may be very crucial for the survival of the decision-making executive. Professional realities faced by managers could range from fear of loss of business, non-achievement of company’s growth and return targets, non-performance at the stock market to personal loss of managerial performance incentives, career advancement and one’s job.

³⁵ Human Rights Watch in their report against Enron’s Dabhol Power Corporation (CEO Rebecca Mark) accused the company of human rights violations in their 166 page report Accessed on May 28, 2003 from <http://www.hrw.org/reports/1999/enron/enron> 7-0.html

c) Corporate Policy documents: Over 80% of the companies surveyed at Mumbai, India had a company policy to deal with corruption (discussed in Chapter seven). They referred to their company policy in corruption-related situations. In those cases where written company policy exists, the manager can refer to the policy documents to understand what course of action could be adopted within the policy framework. But corporate policy documents and codes are often crafted with public relations (PR) and legal defences in mind, so they tend to provide simplistic lists of ‘do nots’. This can prove to be unsatisfactory and impractical, as indicated in the following example:

Company X is a fruit importer and distributor with a clearly worded corporate policy of ‘no bribes’. It opens up a new branch in country Y where customs officials always expect a facilitating payment to clear every consignment. The assigned manager learns that their consignments of fruit will not be cleared without a facilitating payment. The company has a clear choice of either permitting the fruit to rot and lose money, or to pay the customs officials.

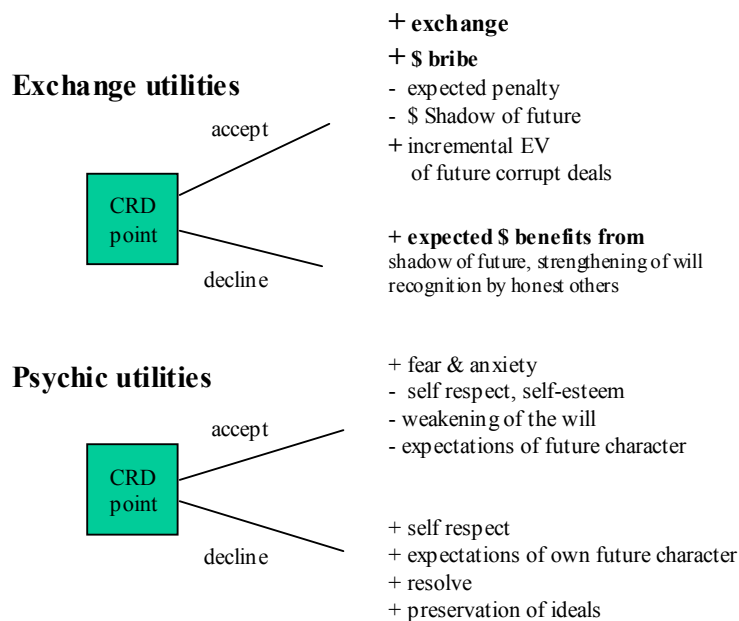
d) Feedback from local managers: Decision-making managers rely on feedback from local managers. Such feedback is usually based on fears and perceived threats to company’s operations, profitability or possible loss of business opportunities. Feedback from local managers could also be motivated by personal gains expected to be made by them through corrupt transactions entered on behalf of the company. Some of the Lockheed executives made personal gains out of slush funds that were created for the purpose of bribe payments to secure business (Sampson, 1977).

e) One’s past experience with corruption: Decision-making managers who have first-hand experience of corruption may use past personal experiences or personal encounters with similar situations as a guideline to formulate a decision. Wartick and Wood (1998:143) have mentioned gullibility about local business conditions to ethnocentric expectations based on past experiences as factors influencing bribe payment decisions.

Mental Models operating in an Individual

In each of the factors discussed above, the manager as an individual goes through a process of evaluating exchange utilities. That does not mean that psychic utilities are absent, but their presence is not acknowledged or pronounced. An analysis of both these utilities gives us an insight into why exchange utilities dominate or prevail in case of many individuals and a bribe is paid. At an individual level, the exchange and psychic utilities operating within one's mind is depicted in an analytical model shown below with possible pros and cons in each case (see figure 4 below).

Figure 4: An analytical mental model of a decision-maker



In the exchange utilities part of the model, the 'accept mode' shows a gain by paying a bribe to secure business in terms of net business benefits from the relevant corrupt deal, together with an increased likelihood of net benefits from future similar business deals (net of their expected bribe payments). Associated with securing a business deal are other benefits such as personal career advancement and stock options discussed earlier. Set against this (refer the minus signs) is the possibility of expected legal penalties and loss of reputation effects associated with possible discovery of the corrupt act or bribe. Again the perceived risks of such discovery are lower in countries where the entire public system is perceived as corrupt by the decision-maker. If one adopts the 'decline mode', then one can expect long term financial benefits due to recognition by others as being ethical, benefits of strengthening one's

will and enhancement of reputation but this may not be very appealing from a short-term perspective for a decision-maker. The 'accept mode' in an exchange utility analysis works to the immediate economic advantage of the decision-maker and perhaps due to that reason a decision-maker is tempted to undertake a corrupt act.

Very rarely does a decision-maker consider the presence of psychic utilities in a corrupt act. The lower half of the model depicts psychic utilities that are present. The 'accept mode' shows the negative consequences of a corrupt act such as fear and anxiety of discovery, lowering of self-esteem and self-respect, weakening of will and the expectation of future character decline. These are present but go unnoticed due to the overshadowing presence of exchange utilities in the 'accept mode'. The 'decline mode' under psychic utilities is obvious in terms of the positive benefits to oneself, but again, exchange utilities are likely to prevail due to the immediate gain that is sought in real life business situations due to reasons discussed previously.

Decision-makers operate from a position of Positional Objectivity

Managers confronting demands for bribe payments are often under pressure of time and influenced by a negative psychological field or ambience. Economic considerations prevail as a combination of all the above factors. The decision-maker misses the non-economic objectives of one's company (corporate social responsibility) because the decision-maker operates from a position-dependent objectivity as Sen (1993:126; 2002:465) has defined the concept. The observer (decision-making manager) cannot separate oneself from the object of observation (economic goals). "What we can observe depends on our position vis-à-vis the objects of observation" (Sen, 2002:465). Strong schemata (economic objectives and factors as discussed above) operate in the manager's mind and are peculiar to the individual manager's position as a decision-maker, thus influencing the process. Decisions are therefore made under fears of loss of business and opportunity, perceived corrupt activities of a competitor, motivated feedback from subordinates, personal career goals and fears, one's negative experiences or expectations, implying coerced decision-making. These managerial decisions involving corruption and bribery are responses to a perceived situation, without questioning the perception itself.

The economic objectives of securing business etc have remained as the prime consideration in managerial decision-making even when legislation prohibits bribery. This is further evident in case of US multinationals such as Lockheed. The passage of the FCPA (Foreign Corrupt Practices Act) in the nineteen seventies was expected to act as a major deterrent to prevent them from indulging in bribery and corruption overseas. Subsequent prosecutions under the FCPA reveal instances where US companies paid bribes and indulged in corrupt practices nevertheless. Some of these include names like Lockheed Corporation (now Lockheed Martin Corp), who are repeat offenders (Elliot, 1997:205). During the nineteen seventies, Lockheed's corrupt practices overseas led to US Congressional investigations and passage of the FCPA (Noonan, 1984). Even after two decades the company had not altered its modes of securing overseas business. In 1995, Lockheed admitted to bribing an Egyptian official to secure business (Elliot, 1997:205). It would be almost impossible to assess the motives and justification of each defaulting company, but in almost all cases it would probably be revealed that decisions to break the law (the FCPA in this case) and risk severe penalties and loss of reputation were responses to managerial perceptions of business conditions and the presence of strong exchange utilities in a manager's mind.

Disrupting the dynamics of corruption

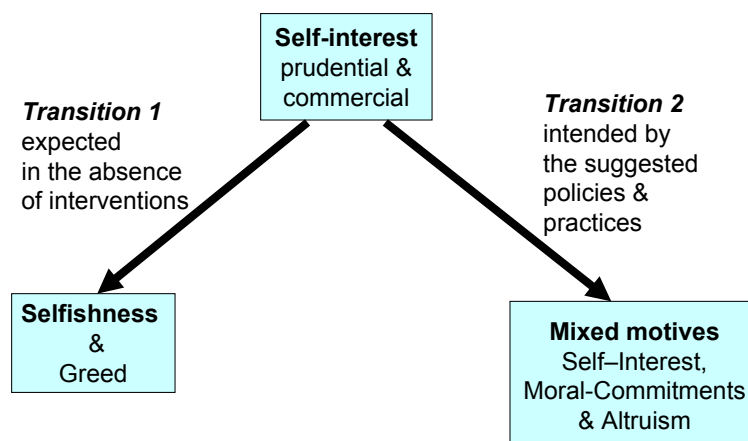
It is safe to conclude from the aforesaid discussion that strong dynamics operate in favour of corruption in business. An individual decision-maker in business is expected to be a commercially prudent person. The constant exposure to corrupt situations in business is likely to transform such a commercially prudent individual into a person susceptible to greed. The first act of bribery may be difficult, but every subsequent act will become easier. Therefore, to achieve an ethical disposition, the existing dynamics of corruption have to be disrupted to ensure that a prudent, commercial person does not reach the point of becoming a greed-motivated company executive as it happened to many executives at Enron (McClellan & Elkind, 2003). This is one of the most compelling reasons why a review of one's internal persona has to be motivated to disrupt the dynamics at an individual level.

Furthermore, it would be all the more desirable if the commercially, prudent decision-making manager can be converted to an individual who not only remains

commercially prudent but also incorporates motives that include moral commitments to society and oneself. This can only be done by introducing a logical decision-making process to deal with corruption-related situations in order to comprehend the “moral implications of a policy decision” (Goodpaster, 1984:3) and to work out “a perspective and a language for appraising the alternatives available from an ethical point of view” (Goodpaster, 1984:3). It is also essential that stakeholder issues are considered as paramount in corruption-related situations. This is more so because, it is often whilst we are surrounded by information that we seem to lack an ability to explain to ourselves, or to others, why a particular action should be chosen (Zeleny, 2004). In international business dealings in particular, information about regulations and procedures is readily available; but the practical know-how that enables appropriate decision-making and conduct in delicate situations (stakeholder context) is much harder to acquire. The law by itself cannot provide ethical guidance nor can good governance be a reality without an ethical disposition as discussed in the previous chapter.

At the individual manager’s level, the CRDM process intends to create an ethical disposition with the objective of leading an individual decision-maker to the point of transition 2 as shown in figure 5 below.

Figure 5: Transition in Rationalities of Managers



This can be achieved by providing ethical guidance through a simple logical process keeping in mind the limitations faced by a decision-maker in corruption-related

situations. In the past, several methods have been proposed for providing ethical guidance to business managers within the various disciplines. Almost all have emphasised the need for multiple perspectives and principles, that is, some form of pluralism. In Strategy, for example, Hosmers' (1991) 'multiple analysis' prescribes economic, legal and moral forms of reasoning in order to "make the right, proper or just decision more readily apparent." Other inquiry-based techniques have been based upon plural rationalities and meta-rational arguments that link strategy with ethics (Robertson & Crittenden, 2003; Singer, 1994). In Business Ethics literature, Goodpaster (1984) set out some "steps towards ethical analysis in management", which include "understanding all the facts", identifying the moral issues and attempting to design a way forward that satisfies both strategic and ethical imperatives, through the exercise of moral imagination (Werhane, 2002). Also within the 'Systems and Management-Science' traditions, other multi-perspective and synergy seeking approaches to decision-making have been developed by Ackoff (1981); Mason and Mitroff (1981) and Linstone (1984) to mention a few. At the level of corporate policy and practice, the use of a multiple perspective approach has helped many companies adopt codes of ethics and generalised decision-making guides (Gordon and Miyake, 2001). Examples include the 'ethical decision making checklist' at McDonnell Douglas Corporation (Murphy, 1988:913) and the Principled Reasoning Approach at Levi-Strauss (Paine and Katz, 1994). Therefore, an easy to use decision-making model relevant to corruption-related situations and its contextual peculiarities needs to be developed on similar lines. This will give decision-makers a fair opportunity to evaluate the consequences of their actions/ decisions within a short span of time while taking into account important stakeholder issues.

Chapter Four: The Theoretical context of the CRDM Model

Introduction:

Understanding the decision-making context in which a multinational business manager operates is critical to the application of any ethical decision-making model. When a multinational company enters a new country and faces decision-making dilemmas, a debate usually ensues as to whether home country morals and standards are to be applied or host country morals and standards are to be adopted in its business conduct. Jonson (1997: 172-177) strongly argues that corruption should be evaluated in terms of consequentialism, whereas Bowie (1999:19-25) considers all business actions in terms of Kantian deontology. This debate between application of home or host country morals and standards has been discussed extensively in the works of De George (1990); Bowie (1999) and Donaldson & Dunfee, (1999). It is essentially a debate between consequentialism or utilitarian ethics and Kantian deontology. Whatever view one subscribes to in theory, a practical response is essential in the context of corruption-related decision-making. Therefore, a response is formulated in this chapter by using Integrative Social Contracts Theory (Donaldson & Dunfee, 1999) with a detailed discussion of stakeholder issues such as human rights and sustainable development, in the context of multinational business decisions. The relevance of the principle of 'double effect' is explored in the context of corruption-related decision-making. The discussion in this chapter provides the theoretical grounding for a CRDM model (corruption-related decision-making) proposed in the next chapter that can implement ethical decision-making.

The Context of Multinational Business Decisions

Irrespective of the arguments provided by a universalist or a relativist, there is no denial that multinational business policy and operational decisions can have a profound impact on the commercial as well as social outcomes in host countries and the home country. When Lockheed Corporation chose to pay bribes through middlemen to Japanese government officials, senior Lockheed executives could have hardly imagined that Prime Minister Tanaka's government in Japan would be brought down by the Lockheed bribery scandal. Carl Kotchian could never have imagined that his company's actions (and his own) would change the way American companies would be required to do business in later years as a result of the passage of Foreign Corrupt Practices Act (FCPA). The aftermath of Lockheed's bribery scandal is not confined to the passage of FCPA legislation in United States or the fall of Prime

Minister Tanaka's government in Japan; it acted as a major catalyst for anti-corruption efforts by the US since then and this in turn led to numerous international efforts during the past three decades.

The Lockheed investigations proved that irrespective of the nomenclature applied, payments made by Lockheed in the USA, Japan, Holland, Indonesia or Italy were considered as bribes in those countries. Such basic ethics are common across all nations and cultures (Donaldson, 1989), irrespective of the arguments offered. However there are exceptions, for instance in the same Lockheed case, Adnan Khassogi was questioned by US authorities, but not prosecuted by either party (US or Saudi Arabia) because payments to Khassogi were within the accepted norm in the Kingdom of Saudi Arabia. A universalist would find moral fault with the situation where Khassogi was not prosecuted, while Prime Minister Tanaka was jailed. Universalists would make no exception to what is called bribery and punishment for it, while relativists may find exceptions based on diversity of cultures and norms of acceptance.

Donaldson & Dunfee (1999:49) feel that these disagreements between universalists and relativists have created highly complex positions in "the practical realms of foreign policy and business practice" and this in turn can lead to confused decision-making. Multinational business managers are, therefore, either confused by or forced to take shelter under these practical realms of business practice. While doing business overseas, corruption is one such complex issue that can raise all sorts of exceptions from relativists against universalists and add to the confusion. Donaldson and Dunfee (1999) have attempted to reach a common ground of understanding between the demands of universalists and the objections of relativists through their Integrative Social Contracts Theory (ISCT). Donaldson and Dundee (1999:49) explain,

ISCT avoids the extremes of either position by recognising
the dynamic relationships among the authentic ethical norms
of diverse communities, bounded in turn by universal
principles called hypernorms"

The essence of ISCT thinking is depicted in appendix IV. At the core of ISCT lies "hypernorms" which form the basic global ethics of interaction. Donaldson & Dunfee (1999:50-52) define hypernorms as moral concepts that are "sufficiently fundamental

to serve as a source of evaluation and criticism of community generated norms.” According to the authors, hypernorms that are fundamental to the concepts of “right and the good” are substantive hypernorms whose source lies in convergence of human experience and intellectual thought. A sample hypernorm that the authors have discussed in their work is “respect for human dignity” emerging from the convergence of human experience and intellectual thought. This norm is so basic and fundamental that it can serve as a source of evaluation and criticism of any other community norm that is not compatible with respect for human dignity. Using this hypernorm in a corporate decision-making process will solve dilemmas in corruption-related situations. If some corporate decision (even if it is based on community generated norm) is likely to undermine the hypernorm of “respect for human dignity” then obviously it is incompatible and should not be executed.

The authors also believe that society operates on some basic norms which are universally recognisable as such, and whose presence is always assumed in the background of any contractual relationship or interaction. Basic norms help build up some other norms, which are not as universal as basic norms but are accepted as consistent norms by a vast majority of people. These are called “consistent norms” as they are substantially consistent with hypernorms. Norms in some cultures, which are mildly conflicting with hypernorms but are not totally inconsistent with hypernorms, form the “moral free space.” These norms, according to Donaldson & Dunfee (1999:222), “express unique, but strongly held, cultural beliefs” and allow room for relativists to address exceptions but “moral free space, in turn, implies the need to precede judgment with an attempt to understand” (Donaldson & Dunfee, 1999:231).

Norms that are substantially or completely incompatible with hypernorms are called illegitimate norms. Donaldson & Dunfee (1999:222) call them “values and practices (that) reach a point where they transgress permissible limits.” These illegitimate norms need to be rejected completely by both universalists and relativists. Moral free space offers a balanced view in cases where the act cannot be called an illegitimate norm and rejected but can be considered in a context-specific circumstance using judgment and an attempt to understand. This thought process is incorporated in the proposed decision-making model in the next chapter in the context of passive corruption, especially with regard to facilitating payments and corrupt transactions

that do not go against hypernorms such as human rights (respect for human dignity) or issues of sustainable development.

ISCT has tremendous practical relevance for multinational businesses, which face confusing stakeholder claims from universalists and relativists, while addressing ethical issues such as corruption. Donaldson (1989) believes that some basic ethics are common across all nations and all cultures and can be termed global ethics. Wartick and Wood (1998:143) maintain that “it is not possible to take an ethically neutral stance in the arena of international business.” Elliot (1997:175) calls corruption a prominent “global issue,” and global issues are the concern of any multinational corporation that intends to ensure success and acceptance by its stakeholders. The success of any multinational business, irrespective of the nation and the culture it functions within, depends on its stakeholders and how the company relates to them.

Corporate Social Responsibility of Multinationals

The concepts of corporate social responsibility and stakeholder theory are well established in management literature (Freeman, 1984; Goodpaster, 1984; Goodpaster, 1991; Evan & Freeman, 1993; Donaldson & Preston, 1995; Donaldson & Dunfee, 1999). Stakeholders, according to Freeman (1984:24), include any “group or individual who can affect or is affected by the corporation.” A multinational company’s stakeholders come from a diverse number of nations and cultures. These stakeholders are groups and individuals who benefit from or are harmed by, and whose rights are violated or respected by, corporate actions (Freeman, 1984). Whenever a multinational executes a decision involving any activity of corruption or bribery, whether directly or indirectly, whether onshore or offshore, unknown stakeholders whose presence has never been ascertained earlier can be affected. Therein is the decision-making challenge for a manager. For the purpose of stakeholder assessment, the stakeholder environment is thus the entire societal environment and structure within which every organisation functions as a part of a global social system, constantly in a process of being able to influence and be influenced.

No company, whether big or small, can argue that it is self-made or self-created and is therefore oblivious to its surroundings. Realism and humility demand that business managers controlling any corporation recognise that they as individuals and the company that they work for as an artificial juridical instrument in their control draw on resources from society and the social systems within which they function and intend to thrive. A corporation as a distinct economic entity has the good fortune to draw from society's existing reservoir of knowledge, human resources and material resources created concurrently, and in the past, representing the toil of past generations and our heritage. Knowledge is incremental and subject to correction over time. It is, therefore, obligatory for a corporation and its control mechanism---business managers to give back and enrich the same reservoir of knowledge, human and material resources they are drawing from, and to leave behind for future generations not a sad legacy of regret and pain but a substantial legacy for betterment and enrichment of humankind---both economic and spiritual.

In this sense, Freeman's (1984) classical definition of a stakeholder is extended, in this thesis, to include all "those individuals, groups or nations of future generations of humankind that would be affected (i.e. harmed or whose rights violated) by the corporate actions in current times." Thus, our future generations too are stakeholders in a practical sense of the term. Therefore every corruption-related decision needs to be ascertained in terms of not only present day stakeholders but also future stakeholders. Correct and adequate stakeholder assessment in corruption-related decision-making will help a decision-making manager honour human rights and issues of the environment and sustainable development.

Wartick and Wood (1998) recommend scanning the environment, understanding and addressing the stakeholders' issues and concerns, and managing emerging issues and trends as steps that managers can take to evaluate an issue concerning corporate social responsibility in hand. Multinational corporations derive their right to function in any society from the society in which they function. Wartick and Wood (1998:72) explain that a corporation's right to function in a society is based on the principle of legitimacy with reciprocal responsibility, thus:

Economic activity, however it is organised, requires some exercise of power over materials, natural resources, and people. It is this power that is at issue in

questions of legitimacy. Do businesses have a right to exercise power over those resources they require? If so, they have social legitimacy. But the right to exercise power is matched by a reciprocal responsibility to use the power in appropriate, socially sanctioned ways and not to use it in unapproved ways.

Multinational corporations draw sanction for their global operations from the global society and not from the home country alone. If they intend to maintain legitimacy of their global operations, they cannot choose anything other than universally acceptable ways of doing business or hypernorms (Donaldson & Dunfee, 1999). Appropriate managerial discretion based on recognition of hypernorms is at the core of any decision-making process required to maintain operational legitimacy *vis-à-vis* the stakeholder. If corporations intend to preserve the legitimacy of their corporate operations, then engagement in any corrupt activity (the exception being payments made to extortionist in life and property threatening situations) needs to be evaluated against universal hypernorms. Multinational managers command substantial financial, material and political resources and it is their choices that influence outcomes for the global stakeholder. It all depends on their ability to make choices in every area of management function, be it economic, legal, social or ethical, which brings forth operational results for their companies and stakeholder outcomes.

According to Wartick and Wood (1998:76) managerial discretion can be exercised by using “tools that allow managers and companies to put the principles of corporate social responsibility into action.” Corruption is an emerging global issue of major concern that forms a part of corporate social responsibility performance. Bribery is an issue that has “ringing significance for contemporary global business” (Donaldson & Dunfee, 1999:223). Ethics as a moral commitment to the well being of human society is already a recognised obligation on part of business towards society. Corruption and bribery are ethical issues and need to be expressed in broader terms than narrow commercial ones or as offshoots of inter-cultural differences, especially when they can affect human rights and sustainable development. Corruption and the incidence of corruption have evoked growing concern from the global stakeholder environment. Corruption is a systemic problem not merely confined to the act itself, the person committing it, or to a particular geographical location. Recognition of its global ramifications has increased international efforts in combating corruption during the

past two decades. Underlying this concerted global action is a simple fear that corruption maybe the single biggest “mother”³⁶ source of all problems facing us now and in the future. Researchers at Transparency International have found a high correlation (0.75) between incidence of corruption and environmental degradation.³⁷ Corruption is also seen as playing an important role in the perpetuation of global problems, such as organised crime, diversion of public resources for private benefit and consequent undermining of poverty elimination objectives, military expansion and the arms race, undermining of civil governments by dictators (both civil and military), undermining the rule of civil law and by criminal forces, and criminalisation (infiltration by criminals and crime money) of political administrations, business corporations and all human institutions. Corruption originating from any corporation needs to be seen as an instrument that can violate basic hypernorms in the global context. A reminder that a corrupt act can violate basic hypernorms is incorporated in the corruption-related decision-making model in the next chapter. The model helps the decision-maker check whether consequences of a corrupt act can violate basic hypernorms such as human rights and sustainable development.

Human Rights and Multinationals

Corruption by its very nature of ‘private gain’ violates rights of other individuals, groups and nations. This aspect of ‘private gain’ results in general detriment, and many a time a corrupt act can violate basic human rights. Every corporation has to honour certain fundamental human rights common to all societies, and therefore, every act of corruption needs to be evaluated against basic human rights by a decision-making manager. The private gain of global corporations through a corrupt act can encroach upon certain basic rights of individuals, who under most circumstances cannot fight a global corporation. When we refer to human rights that we seek to protect, we can use the United Nations’ Universal Declaration of Human Rights as a reference document. The UN Declaration of Human Rights is a global instrument ratified by a large number of nations and adopted by them in theory, and even amongst them human rights abuses occur. Also there are many other nations who have not adopted the instrument in theory nor practice, with laws and their

³⁶ U.N. Secretary General Kofi Anann called it the mother source of most problems afflicting the world, while opening the 9th Anti-corruption Conference at Durban, S, Africa, 1999.

³⁷ Transparency International’s website: <http://www.transparency.org>, January, 2001.

enforcement contrary to the basic principles and articles of the UN instrument. However, for the purpose of this thesis, basic human rights as understood in business ethics literature are relied upon. Henry Shrue (1980:170) in *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy*, has insisted that “no individuals or institutions, including corporations, may ignore the universal duty to avoid depriving persons of their basic rights.” Shrue (1980) has used some simple propositions to define a basic right. These propositions are: (i) everyone has a right to something. (ii) some other things are necessary for enjoying the first thing as a right, whatever the first right is and (iii) therefore, everyone also has rights to the other things that are necessary for enjoying the first thing as a right.

Donaldson (1989:75), using Shrue’s propositions in conjunction with James Nickel’s work on human rights, has enlisted certain propositions to ascertain a ‘fundamental international right.’ The propositions are: (i) the right must protect something of very great importance. (ii) the right must be subject to substantial and recurrent threats (iii) the obligations or burdens imposed by the right must satisfy a fairness-affordability test. In applying the fairness-affordability test before classifying a right as such, Donaldson’s (1989: 81) explains:

fairness-affordability’ condition to mean that for a proposed right to qualify as a genuine right, all moral agents must be able under ordinary circumstances, to assume the various burdens and duties that fairly fall upon them in honouring the right, and, further, that some “fair” arrangement exists for sharing the duties and costs among the various agents who must honour the right.

Based on the above three propositions, Donaldson (1989:81) has classified the following as ‘Fundamental International Rights’ (i) the right to freedom of physical movement (ii) the right to ownership of property (iii) the right to freedom from torture (iv) the right to a fair trial (v) the right to non-discriminatory treatment (freedom from discrimination on the basis of such characteristics as race or sex) (vi) the right to physical security (vii) the right to freedom of speech and association (viii) the right to minimal education (ix) the right to political participation (x) the right to subsistence. Donaldson (1989) states that this is a ‘minimal list’ and this is not to be construed as the only rights, ignoring the existence of legal rights and nation-specific moral rights.

In the context of international business operations and multinational corporations, the above list of fundamental rights can be used as a checklist by a decision-maker. Every time a corporate decision for use of corrupt means to gain a business advantage comes up for approval, the list of fundamental rights can serve as a checklist to ensure that none of these rights would be violated by the decision. This idea is incorporated in the decision-making model in the next chapter. Such an exercise will provide a permanent solution to any ostensible conflict of interests between the compelling circumstances of business *vis-à-vis* a stakeholder's fundamental human rights.

Sustainable Development and Multinationals:

The World Commission on Environment and Development defined sustainable development as “meeting the needs of the present without compromising the ability of future generations to meet their own needs.”³⁸ For business it means conducting activities taking into account present and future impact on environmental and social issues. Some of the issues such as right to physical security, right to property and right to subsistence are intertwined with issues of sustainable development. Wartick and Wood (1998:17) have developed a “Corporate Social Performance Model” that can demonstrate the nature of relationship between corporate behaviour and outcomes of such behaviour, including social outcomes. If corporate behaviour outcomes meet social obligations, it is said to have honoured its stakeholder commitments under Wartick and Wood's model. If corporate behaviour (decisions) results in negative social outcomes, the corporation is said to have failed in its corporate social performance obligations and stakeholder commitment.

Organisations can “implicitly and explicitly create their own external environment as much as respond to it” (Adler & Bird, 1989:265). The external environment for any multinational is the global business, economic, social and human environment. It is, therefore, in the “firm's best interest by creating (rather than simply reacting to) a positive external environment” (Adler & Bird, 1989:265). The professional challenge, then, for any multinational manager lies in creating and defining a standard of action or a standard of decision-making that will ensure a positive external stakeholder environment. While dealing with corruption-related situations it is essential to find out

³⁸ www.un.org

whether the payment of a bribe or entering into a corrupt transaction shall cause environmental harm or impact issues of sustainable development to the detriment of stakeholders, either directly or even remotely (incorporated in the decision-making model in the next chapter). If the decision-making manager or company finds that it will impact stakeholder interest negatively then they should withdraw from such a situation. This is the bare minimum standard of decision-making expected of a socially responsible company.

The Overarching Principles in Business Conduct

Responsible business decision-making is not limited to respect for core stakeholder issues such as human rights and issues of sustainable development but extends to certain “overarching principles” business has to invest in its entire decision-making process and conduct. It is based on the utilitarian role of business for society integrating along with it virtue ethics and the principles of rights, justice and care (Velasquez, 2002: 130-132). The utilitarian role of business entails that business produces goods and services efficiently and economically for the overall benefit of society. While doing so, business conduct has to respect the right of doing business given by society, by displaying responsible behaviour. All actions on part of business are expected to display fundamentally a “morally virtuous character” as opposed to a “morally vicious character” (Velsaquez, 2002: 139) in order to adhere to the principles of rights, justice and care. Each of these moral considerations i.e. rights, justice, utility, care are inter-related and have to prevail in responsible business conduct. The practical implementation of the aforesaid principles will be possible only when the organizational culture in a company is conducive to the above and the individual decision-maker has reached a certain stage of cognitive moral development.

The Principle of Double effect

Originally formulated within the just-war tradition of Political Science, the ‘principle of double effect’ (PDE) has recently been applied to a variety of international business problems on the basis that “even if business is conducted for a legitimate purpose and by legitimate means, harmful side effects will occur” (Bomann-Larsen and Wiggen, 2005:4). The PDE applies to actions that have harmful side effects (HSE). According to the PDE an action with an HSE is *not* blameworthy, provided that five conditions hold:

- (i) the *main* ends and means are good, or neutral
- (ii) the HSE is not part of the ends, nor used to achieve the ends
- (iii) the intended good outweighs the harm of the HSE
- (iv) the HSE is unavoidable if the main good is to be achieved
- (v) the actor (manager) has taken steps to minimise the HSE.

In the context of multinational business operations and corruption-related decision-making the ‘principle of double effect’ finds practical application in certain situations where making a facilitating payment may be the only way out. However, while evaluating the five conditions, ethical judgement has to be exercised lest we end up with a case of paradoxical cause where the outcome is the opposite of the intention. The intention in applying the ‘principle of double effect’ is to secure an ethical outcome in a corruption related situation. This can be undermined if good judgement is not exercised during the whole evaluation and decision-making process but a compliance approach adopted instead (as discussed in the case of corporate governance in chapter 2), then we may end up with a situation of merely ticking of the five conditions without actually evaluating them in their true sense.

Chapter Five: The CRDM Model

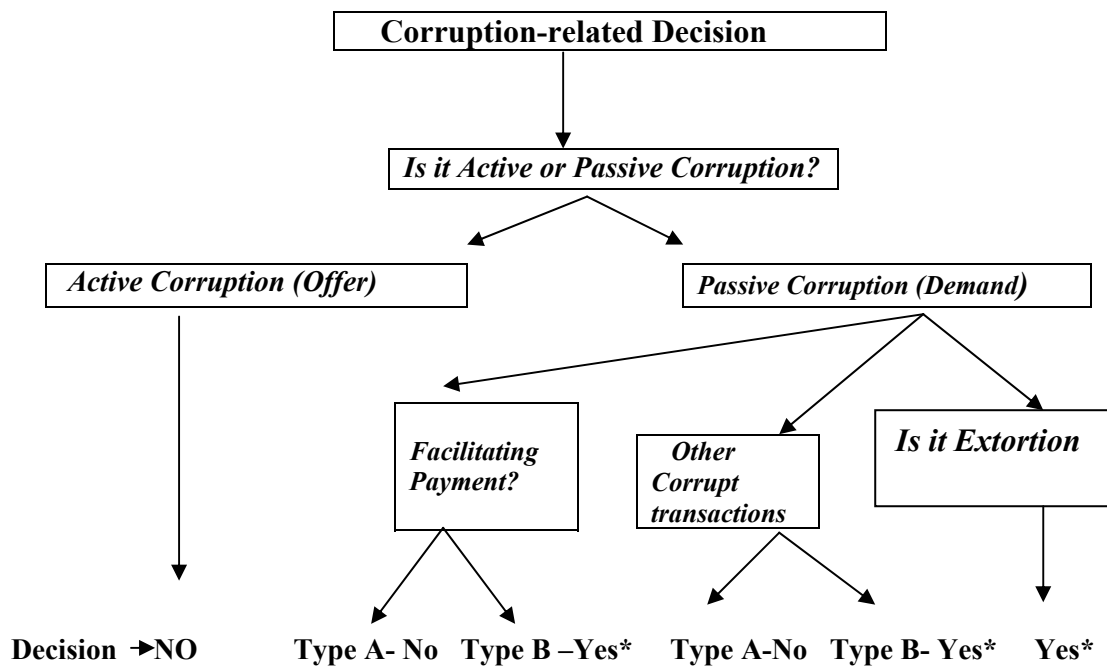
Introduction:

This chapter provides a simple, easy-to-use decision-making model for corruption-related decision-making (CRDM) by business managers, based on the theoretical grounding discussed in the previous chapter. Any company that is conscious of its stakeholder obligations will ensure that it will not enter into any corrupt transaction or make a facilitating payment where the outcomes are likely to cause harm to human rights and sustainable development. The decision-making model is designed to help a manager conclude within a very short span of time: whether to participate or not in a transaction involving bribery and/or corruption. It is an attempt to provide a contextual meaning to one's decision. The model provides an opportunity to assess the impact of one's decisions on stakeholders. The model does not intend to subvert the rule of law nor permit corruption undertaken in circumstances that this model may appear to permit. The proposed CRDM model aims to make managers think more effectively from an ethical perspective and address stakeholder issues in practical terms such as human rights and sustainable development in corruption-related decisions. In order to use the model effectively, it is assumed that a manager has an ethical disposition and a desire to protect critical stakeholders while making decisions.

The CRDM Model (Corruption-related decision-making model)

The concepts and principles discussed in the previous chapter can be readily built into a practical model-based guide or heuristic, so that managers need only refer to the model (in the same way that they often refer to codes) rather than acquire the relevant ethical knowledge in full detail. Such a model, its nature and purpose, is closely analogous to many strategy models, such as Porter's (1980) Industrial Attractiveness Model and its deployment in the context of competitive strategy formulation. Working with a constructed model (or flowchart, or depiction of theoretical framework) simply alleviates the manager's need to study the more arcane details and complexities of the underlying theory (e.g., Calori, 1999; Singer, 2003). Forms of corruption can each be linked to its possible impact and to prescribed courses of action, each of which can be readily justified and explicated, as required. Figure 6 shows the proposed CRDM (corruption-related decision-making model).

Figure 6: A CRDM (corruption-related decision-making) Model



Key to Model:

Active Corruption: A situation where the decision-maker designs, insinuates, creates a condition to pay a bribe or initiates a corrupt act. The answer is always “NO”.

Passive Corruption: A situation where the decision-maker had no intentions or plans but has been approached for a bribe or a corrupt act. The answer is subject to the options depicted on the right hand side of the model.

Type A: Payments or acts of corruption that will adversely affect “fundamental human rights, the environment or issues of sustainable development.” The UN’s Universal Declaration of human rights or the list of fundamental human rights enlisted by Donaldson (1989) can be used as a checklist to determine what rights might be violated. Like wise a checklist of issues concerning the environment and sustainable development can be made from www.un.org. Another checklist could be made, based on the concerns peculiar to the stakeholder community relevant to the company.

Type B: Payments or acts of corruption that will NOT adversely affect “fundamental human rights, the environment or issues of sustainable development.”

Facilitating Payment: These are payments demanded by a corrupt system or a corrupt person for dispensing one’s discretionary powers. This includes petty payments demanded by lower level functionaries in a public office. A facilitating payment has to be evaluated against criteria laid down under Type A and Type B payments. If it is classified as Type A then the answer is a ‘NO.’ If it is classifiable as Type B, the answer is a conditional ‘Yes.’

Corrupt Transactions: This covers all transactions that are not monetary bribes but are demanded to dispense a function, favour or discretion as a matter of *quid pro quo*.

Here again, classification under Type A or Type B will determine a 'NO' or 'Yes' response.

Extortion: These are payments or actions undertaken under grave compulsion when the lives of company personnel are in danger. This can also include threats to company property and smooth functioning of business when the law proves incapable of providing protection.

NO: The word, 'NO' indicates a No answer to any form of active corruption and payments of Type A.

Yes*: Indicates a conditional 'Yes', which implies payments to be made if and only if payment is unavoidable under the circumstances, and is not a Type A payment but a Type B payment. The word 'Yes' also implies that stakeholder-conscious multinational corporations will support anti-bribery/corruption initiatives of NGO's and International bodies. They will make sincere attempts to bring about systemic changes. This logic is similar to dealing with harmful side-effects under the 'Principle of Double Effect' (Bomann-Larsen & Wiggen, 2005).

Applying the CRDM Model

The above CRDM model takes the decision-maker through a logical decision-making process in a corruption-related situation within a very short span of time. To demonstrate its utility and the relevance of each individual component of the model, let us apply it to a hypothetical situation of an US multinational company setting up a new manufacturing and distribution facility in India. The company being a US company is already bound by the US Foreign Corrupt Practices Act, 1977 to adopt a 'no bribery policy', and its company executives are expected to be aware of their responsibilities under the FCPA. However, the company's Indian consultants and advisers warn that bribery is a part of the Indian business scenario and there will be many situations when the company will be expected to pay or suffer consequences of non-payment of bribes. The US company decides to use the CRDM model in India since (i) both the CRDM model and the FCPA permit limited facilitating payments in certain situations so using the CRDM model will help them comply with the FCPA as well justify the context if at all any payments have to be made, and, (ii) the CRDM model also acts as a pointer to relevant stakeholder issues and deals with non-monetary corrupt transactions.

As the US company goes through the process of setting up business in India, the US company managers encounter corruption-related situations and deal with them by using the CRDM model (on p.71) as under:

a) Is it ‘active or passive’ corruption?

Whenever the US company managers encounter a corruption-related situation, they refer to the CRDM model and start by asking themselves, whether the situation under consideration amounts to a situation of active corruption or passive corruption? The word ‘active’ and ‘passive’ as defined in the key to the model. The response of active corruption is ruled out at all times as per the model so the US company managers will never design, insinuate, create a condition to pay a bribe or initiate a corrupt act as the company’s response under the CRDM model is a categorical ‘No’ because the model recommends a ‘No’ response on the left-hand side of the model under ‘active corruption’.

If the managers come across a demand for a bribe or a corrupt act or in other words a situation of ‘passive corruption’, then the model recommends examining the options on the right-hand side of the model to find the answer or the response to be made. This discussion is extended in the following paragraphs to each of the other branches of the CRDM model under the head ‘passive corruption’ with actual scenarios and response using the model in each case.

b) Active Corruption

Suppose in the case being discussed, the US company applies for company registration with the Registrar of companies and company entrust the task of securing the registration to their Indian consultants. The consultants while submitting the application mentions that usual process time is anywhere between 1 to 3 months but it could be expedited by paying a standard bribe of US \$ 250 equivalent. Applying the CRDM model in this situation, the US decision-making executive informs the consultants that no bribes will be paid by the company as a matter of policy. This action or decision is in keeping with the left-hand side of the CRDM model where the response is a ‘No’ to a situation of ‘active corruption’.

c) Passive Corruption (as facilitating payment- Type B)

In the same example, the company does not hear from the department for several months, despite a few polite reminders. The company instructs its Indian consultants

to personally follow-up the application. The consultants personally meet the concerned official dealing with the application who indicates that a payment in cash (equivalent to US \$ 300) would be required to ensure an immediate approval. The same day, the concerned public official replies to the company's previous correspondence apologizing for the delay with a note asking for certain documents to complete the process. This is a typical situation of rent-seeking behaviour on part of the concerned public official. However, it would be difficult to prove that it is rent-seeking behaviour because ostensibly the public official has apologized for the delayed response and has provided a list of requirements to complete the process. But, in reality, the official responded only when the Indian consultant went to personally meet the official and when the official had the opportunity to spell out the bribe demand. The company now has the choice of making this 'grease' payment or waiting for the approval for another uncertain period or adopting a complaint process with the higher authorities. Using the CRDM model, the US decision-making executive classifies the demanded amount of US \$ 300 equivalent as a passive payment (demand made through the consultant) and in the nature of a facilitating payment. The US company manager evaluates the facilitating payment against 'type A' criteria (as defined in the key to the model) and concludes that it does not affect issues such as human rights, environmental issues or sustainable development and is therefore a 'type B' payment. Since it is a 'type B' payment the US company executive decides to make the payment and obtain the registration.

d) Passive Corruption (Facilitating payment-Type A)

After securing the company registration, amongst other applications, the US company seeks allotment of industrial land from one of the many 'State Governments'³⁹ of India. The allotment is made promptly at a concessional rate. The company then submits its project plans for approval with the appropriate departments and simultaneously seeks clearance from the 'Pollution Control Board' for its effluent treatment plant. The 'Pollution Control Board' engineers point out certain design flaws with the treatment plant but convey to the US company that they are willing to overlook these flaws and approve the plans without any modification if a certain sum of money is paid to them. Using the CRDM model, the US company manager

³⁹ India has a federal structure with a national government at the Centre called the Central Government, with 27 provincial governments in charge of provinces known as 'State governments.'

classifies the payment as ‘passive corruption’ and as a facilitating payment. However, while evaluating the nature of this facilitating payment against the criteria for a ‘Type A’ payment, it turns out to be a ‘Type A’ payment as an incorrectly designed effluent treatment plant is likely to have an adverse effect on the environment. Therefore, if the company makes this grease payment and proceeds to construct an effluent plant based on a faulty design then the company is will have knowingly and willfully damaged the environment (a critical stakeholder issue). The CRDM model prohibits this kind of a facilitating payment with a ‘No’ prescription which the US company executive follows. The company rectifies the design faults and secures approval on the basis of faultless designs without paying any bribe.

e) Other Corrupt Transactions (Type A)

The US company starts work on its project by fencing the allotted land. Immediately thereafter, local villagers stage protest outside the company property asking for justice and compensation from the company as the company has taken over their land. The local villagers allege that their land was their only means of livelihood and it was arbitrarily acquired by the local State government without proper compensation and given to the company. The company approaches the local State government to understand the nature of the protest by the villagers. The government officials dismiss the villagers’ claims as frivolous and instead offer police protection for protecting company property. The company asks for some time and makes independent enquires about the land acquisition process and the veracity of the allegations made by the protesting villagers. The company finds that there is substance in the allegation of the protestors and the land acquisition process is a ‘corrupt transaction’ on part of the State government done with a view to attract industrial investment into the State.

Since the land transaction is corrupt, the US company managers in India deliberate and use the CRDM model to decide whether to (i) accept police protection given by government officials, and (ii) hold on to the land and start the construction work or (iii) withdraw from the project.

Using the CRDM model, the transaction is classified as ‘passive corruption’ (as defined in the key to the model) and not being a financial transaction, it is classified as an ‘other corrupt transaction.’ It is further classified as a ‘Type A’ corrupt

transaction as the transaction has a negative impact on the human rights (right to livelihood based on UN Declaration of Human Rights) of the protesting villagers. Therefore, by using the CRDM model which provides 'No' as an answer, the US managers withdraw from the land.

f) Other corrupt transaction (Type B)

Not only does the US company withdraw from the land, but they also withdraw from the State where the land was allotted to them. The company is invited to set up its manufacturing facility by another State government in India. While making the land allotment, one senior state government official asks for employment placement for one of his sons with the company, making it obvious that the allotment of land will be done promptly only if the company is willing to consider this request. The US company manager uses the CRDM model and classifies this demand as 'passive corruption' and a 'corrupt transaction' that is not a 'type A' transaction but a 'type B' transaction. The US manager agrees to this transaction.

g) Extortion

The US company starts construction work through some local contractors on the land allotted to them. After the work commences, local hoodlums approach the company asking for a '*hafta*' (protection money payable weekly, bi-weekly or monthly) to ensure that there is no disruption to the construction work. The company refuses to pay them and lodges a complaint with the local police station seeking protection. The local police assure protection to the company with periodic visits to the construction site by police patrols. But within 15 days the company experiences delays and stoppage of work at the construction site due to the hoodlums. The company vehicles are stopped with obstacles on the road almost every day and company employees are assaulted as a matter of daily occurrence. The water supply tankers are obstructed and hijacked to other places as a result water does not reach the construction site. The hoodlums also threaten the construction site labour who leave the site and do not return and that results in stoppage of work. The company seeks police intervention which is inadequate and does not really solve the problems. The company is again approached by the hoodlums for a '*hafta*' with an assurance that everything will be restored to normal if the company pays up. The US company managers find this situation extortionate and corrupt. They use the CRDM model and conclude that this

is a situation of ‘passive corruption’ and ‘extortion’ as per the right-hand side of the model. They decide to pay as they have to protect the lives of their company personnel and their property.

The US company does have the option of abandoning the India venture completely and not paying anything or doing anything that is remotely corrupt. But is it the right step to take in the greater interest of global society? The argument is from the perspective of our global society and in this hypothetical case the host country society i.e. India. If the US company does withdraw from India then it will also have given up the opportunity to bring economic progress and all the multiplier effects that go with it (such as employment and education) into the world’s largest democracy which has a few hundred million people living in absolute poverty. Therefore, applying the CRDM model in this case not only helps the US company meet its obligations to its stakeholders, comply with the FCPA but play the role of an agent of progress i.e. both economic and moral (corruption is expected to reduce as employment, education and economic progress occurs). The US company at the same time can make monetary contributions to NGO’s fighting corruption and support anti-corruption initiatives in India as the model recommends. For every ‘Yes’ payment or action in the model is conditional upon extending support to anti-corruption efforts.

Rationale for each component of the model

The CRDM model and the rationale behind each component of the model can also be represented as a relationship between a scenario and its prescription, as in Figure

Figure 7: CRDM scenario and its prescription

Scenario	Prescription (action)
Active Corruption (offer)	Do not proceed
Passive Corruption (demand) Type A	Do not proceed
Passive Corruption (demand) Type B	Proceed conditionally ⁴⁰
Extortion	Proceed conditionally

Specifically in the model, where *active* corruption is under consideration, that is initiation of a bribe by a multinational business manager, the prescription is ‘do not

⁴⁰ Conditional as per the key to the CRDM model.

proceed' (except in special cases that are outside the ambit of most business dealings, such as offering a bribe to liberate an oppressed victim of a corrupt regime). The ethics here is quite simple: that one should not tempt a public official, since this might activate a dynamic of corruption, where none existed before. Next, in passive corruption decisions where there is *also* a reasonable expectation of human rights violations consequent upon payment of the solicited bribe (i.e., Type A payments) or harm to sustainable development, the ethical prescription is again, 'do-not proceed', since one ought not to be instrumental in such violations.

Type B payments are rather different. In these circumstances, solicited payments are conditionally endorsed (i.e. right hand side of model) provided that they are essentially unavoidable; that is, there is no known alternative way of securing the particular business deal. However the PDE-derived 'condition' for agreeing to solicited facilitating payments, is that the relevant business entity must at the same time be supporting *ongoing* activity aimed at promoting corruption reduction, human rights and environmental restoration. In those cases where the model appears to permit payments or acts such as Type B payments or acts, the payments are to be made or acts entered into, if and only if it is unavoidable, and it does not impact on stakeholder issues spelt out as Type A.

What constitutes 'unavoidable' is a matter of ethical judgment. For instance, in a country where corruption is rampant and public sector employees are underpaid, facilitating payments demanded by lower level functionaries for performing their duties (rent-seeking behaviour) can be made in extreme cases where they are not Type A. Likewise in similar situations, a lower level functionary may demand a job for his kin with the company in question or demand some favour from the company simply to perform a function. This, too, can be avoided as long and as far as it can be done, but there are times when it is practical to comply with such a demand to buy peace and save time if the demand is not going to impact any Type A issue. Although these Type B payments or acts can be strictly interpreted as corruption under the current international legislation in some countries in the world, the practical reality of social conditions in many countries around the world would place a company in compelling circumstances to make such facilitating payments or go through an expensive process of refusing to do so. This is similar to the US Foreign Corrupt Practices Act that

permits facilitating payments in “limited” circumstances to foreign public officials for “routine governmental action.”⁴¹ Whatever the option chosen, it will provide a learning curve experience for a decision-maker to work out better options to deal in those countries and the CRDM model will still prevail as an ethical decision-making instrument and a guideline. The facilitating payments that the CRDM model appears to permit is not to be exercised without ethical judgment taking into account the facts and circumstances of each case for corruption is also contextual (Johnson, 1997).

The justification for making contextual decisions is within the revised framework of ‘Principle of Double Effect’ (PDE) or just war concept as applied to corporate activity. Harmful side-effects do occur in course of legitimate business activities but it is important that these are justifiable to relevant stakeholders (Bomann-Larsen & Wiggen, 2005:4) and in such cases active measures are to be taken to prevent or minimize the side-effects (Bomann-Larsen & Wiggen, 2005:4). Such active measures can be in the form of consistent support to NGO’s such as Transparency International in their fight against global corruption. Porter & Kramer (2002:40) have mentioned such an example. They write that 26 US corporations along with 38 corporations from other countries have joined to support the work of Transparency International in its work to deter and disclose global corruption. According to Porter & Kramer (2002:41) this in turn helps create an environment that rewards fair competition and enhances productivity, which benefits citizens, and helps sponsoring companies gain improved access to markets. The relevance of PDE as applied to the decision-making process is to make a decision-maker aware and responsible for side effects if they are likely to occur (Bomann-Larsen & Wiggen, 2005:6).

When the above discussion is applied to the context of Type B facilitating payments or corrupt acts in the model it means that harmful side-effects are expected from Type B payments or acts as they are likely to re-enforce an existing corrupt system (a corrupt system is assumed to be existing as the company is not going to initiate a corrupt move nor comply with a Type A payment or corrupt act), but at the same time the company will actively assist in the international anti-corruption efforts and attempt to bring about systemic changes within the limitations that a company

⁴¹ www.fcpaenforcement.com

operates in. Ethical judgment at all stages has to be exercised for the CRDM model's commitment to corporate social responsibility or any other justification such as PDE to be valid (see next section).

In situations of extortion where the lives of company employees and property is in danger and ransom is demanded or protection money is demanded, the company can comply with the payment and work out ways and means to either quit the place or seek administrative protection as is practical under the circumstances. It is difficult to generalize response in such cases because it will depend on the peculiar circumstances of each case. However, it is possible to generally say that wherever law and order failure has taken place and as a result the company is a victim, the company should pay and work its way out to save its employees and property. There are no provisions in any of the anti-corruption or anti-bribery legislation in existence or under process that prohibits companies from paying extortionist and freeing one's employees or property at risks. In situations of extortion, it is a case of a nation's administrative failure and breakdown of civil society, therefore the first priority for a company should be to resolve such situations simply by taking care of its employees and property.

Resolving decision-making dilemmas with the Model

In situations like the one mentioned in chapter three (fruit rotting on a dock example)⁴² a manager might be well advised to give in to solicited facilitating payments, as a matter of commercial prudence, or utilitarian expectations, or even as a matter of principle. The manager must consider, for example, the possibility that an initiator of a 'facilitating payment' might be in a condition of poverty, that the payment in question might have no expected adverse consequence for human rights, nor for the environment (indeed, rotting food can be an immediate hazard). On the other hand, many thoughtful managers may become uncomfortable making such payments, perhaps noting that they inevitably reinforce the dynamic of corruption in the wider society. However, disruption of corruption dynamics in any society is not going to take place in a day, simply because corruption is as ancient as our

⁴² On page number 56.

civilisations and beyond the scope of any one actor to bring about instant reforms. Forms of corruption and their impact vary essentially in a contextual manner.

One way to bring about a disruption in the corruption dynamics is to bring about a transition in decision-makers from one of self-interest, both prudential and commercial to self-interest with moral commitments and altruism as proposed in chapter three. This can be brought about by shifting the position of a decision-making manager from one where the decision-maker views not only economic goals but also reflects on the harm that one's corrupt action may cause to society. In the case of facilitating payments that are not expected to lead to human rights violations, or environmental damage, the main 'side-effect' of making the payment is a reinforcement of the dynamics of corruption in the societies involved. A typical passive facilitating payment in which there is no expectation of human rights violation or environmental harm, is the same fruit example. It also meets the first four of conditions of the PDE for:

- (i) the 'main' ends and means are offloading the fruit and getting it to market, which are indeed good
- (ii) the HSE (i.e., the strengthening of the dynamic of corruption) is certainly not part of the ends, nor is it used per se to achieve those ends
- (iii) by almost any reasonable estimate, the intended good (i.e. marketing the fruit) outweighs the HSE harm (which is an abstract and negligible increment in general corruption, in this case)
- (iv) the HSE is likely to be inescapable and unavoidable if the good is to be achieved: if you don't pay the bribe, as a matter of fact, the fruit will rot (although there ought to be an effort to seek or design a feasible alternative)
- (v) the PDE *can* be met, simply by insisting on a programme of *ongoing corporate support of anti-corruption initiatives* by NGO's and good governments, aimed at disrupting the dynamic of corruption.

Communicating the CRDM model

In a study of business codes of the largest two hundred multinational companies world-wide, only 52.5 % of the companies or 105 companies had a business code (Kaptein, 2004). Out of these 105 companies only 11% had a policy that covered respecting the human rights or dignity of those affected by the company's activities

and promoting them where applicable. Only 2% of these company codes conveyed “setting an example in countries where human rights are seriously and systematically violated” (Kaptein, 2004:20). If this is the current state of affairs with existing codes of business conduct amongst the two hundred largest multinationals, then it implies that the CRDM model will have to be first adopted as a part of the standards of organisational conduct in order to make it work.

Formal adoption of the CRDM as a part of an organisation’s codes and practices will start the process of communication, both within and outside the company, as to what standards the company intends to adhere to. In order to succeed, the promulgation of the CRDM model should involve senior management. They would have to be involved in communication of the model to operational managers within the organisation. Effective communication of ethical standards to one’s managers (Ferrell et. Al, 2002:189) is a crucial factor to the successful implementation of the CRDM model. Communication starts with provision of executive training to all levels of managers, but with strong presence of senior management laying down ethical procedures and a review process. It also involves consistent encouragement to all strata of managers to contribute in various ways to the corruption reduction effort such as (i) feedback from operational managers (ii) monitoring of ethical issues involved while dealing with corruption-related situations (iii) communicating the company’s intent and operational policies in corruption-related situations, and (iv) setting up of ethics committees who can offer guidance to individual operational executives when they face ethical dilemmas in corruption-related situations.

By invoking the model in specific corruption-related situations managers can re-enforce internally the broader point that the company’s words, intent and actions match, whilst also re-enforcing externally the company’s commitment to critical stakeholder issues. Overall, the CRDM model can assist in updating business codes and policies which create a more transparent system within a company to deal with the hidden world of corruption in the external business environment.

Conclusion:

The CRDM model and the process set out in this chapter is intended to operate at the level of a manager’s conceptual model and within the culture of business entities.

Decisions about bribes can then be more readily rejected or explained and justified with reference to a shared contemporary purpose: the use of knowledge to create wealth *and* reduce corruption. These two words “active and passive” used in the model define the decision-maker’s intent and signify the role consciously chosen. Ethical conflict in justification or rejection of any corrupt activity is eliminated by the usage of these two words. If one engages in “active corruption”, one can safely presume that ethical reasoning was not an ingredient in the decision-making process, *ab initio*. If one is involved in “passive corruption”, ethical reasoning still has a chance to perform its part. The decision-maker who engages in active corruption is not ethically conscious and does not give stakeholder issues a fair chance. Managers who belong to this “school of action” may find it difficult to adopt the decision-making model. However, those who find it difficult to take corruption related-decisions harbouring ethical conflicts in the process shall find the CRDM model very useful. Managers who encounter situations that encourage them to formulate active corruption but would like to avoid active corruption will find utility in this model as well. The above decision-making model has tremendous utility in decision-making and has the potential to be used as a quality control measure or a good practice document in an organization

Chapter Six: The Relevance of CRDM to Enron and Shell

*Businesses have ongoing operational tasks, which have clear human rights dimensions - Royal Dutch Shell in their company’s Human Rights training supplement*⁴³

Introduction:

⁴³ Source: <http://sww.cc.shell.com/px/humanrights/> 2002

In the previous chapters, the concept of CRDM and a CRDM model was proposed with a view to empower managerial decision-making in corruption-related situations within the framework of corporate social responsibility. The proposed CRDM model provides decision-making managers with the scope to consciously protect human rights and issues of sustainable development during corruption-related decision-making. These are moral minima of tremendous significance. In this chapter, the cases of Enron's Dabhol power project in India and Shell's operations in Nigeria are analysed. Both Enron and Shell faced allegations of corruption, bribery, accusations of human rights violations and environmental degradation. In both cases, the companies faced protest from stakeholders, stoppage of work, loss of money and opportunities and damage to their company image and goodwill. These two cases reiterate the importance and relevance of the CRDM model proposed in this thesis

Shell learnt from its experience in Nigeria (the execution of Ken Saro-Wiwa by the Nigerian military regime⁴⁴) and later introduced compulsory human rights training programme for its executives recognising the interconnectedness between business decisions, human rights issues and the environment. The Shell case is considered as the quintessential case that placed the interconnectedness of business, the natural environment, and human rights on the corporate agenda (Wheeler, Fabig & Boele, 2002:301). Enron was another high profile company that attracted stakeholder protests in India (human rights violations), Brazil (environmental damage) and many developing countries where it operated (Prashad, 2002). Unlike Shell, for Enron, the Dabhol experience (India) was a case of circumvention of stakeholder interest without any remorse. The company blatantly ignored stakeholder issues such as human rights (in India) and environment issues (in Brazil) consistent with a company culture that lacked honesty and an ability to introspect. Enron could never seek answers by introspection because of its prevalent corporate culture of serious financial manipulations that had made Enron the "most innovative company" for five years in a row (Swartz & Watkins, 2003:3), in the eyes of Wall Street and the investor community. Such a company was not likely to ever seek answers from within. And it

⁴⁴ Discussed in this chapter

was the same inability to seek answers from within that led to the company's voluntary bankruptcy⁴⁵ in 2001.

Likewise, we as a society post Enron fail to introspect on anything other than financial implications of Enron's collapse in USA, ignoring serious stakeholder violations by Enron such as human rights and environment. Although there are no studies to draw a connection between a company's propensity to cheat, lie and defraud in financial markets with the propensity to commit environmental damage and human rights abuses, it is worth considering that a company culture inherent with propensities to violate stakeholder issues such as human rights and issues of sustainable development will sooner or later commit fraud in financial markets. Logically this can be a thesis and a direction for empirical research to examine (post mortem) Enron type cases and the pattern of co-relation (if any) between the two propensities. The underlying factor common to both propensities is financial greed aided by the manipulative hand of corruption and bribery.

On the other hand there are some companies of repute who refrain from corrupt acts under the most difficult business conditions and have succeeded in communicating its commitment to ethical conduct both within and outside the organization. Texas Instruments from USA and the Tata Group of companies from India are discussed in this context at the end of the chapter.

Background

Shell and Enron faced stakeholder protests in Nigeria and India respectively in course of their operations. Both companies faced allegations of corruption, bribery and human rights abuse from the media and stakeholder groups. Human Rights Watch (an international NGO) accused Shell and Enron of human rights violations against their stakeholders after conducting investigations in Nigeria and India. Should this be interpreted as an opportunistic strategy on part of certain stakeholder groups and NGO's to pressurise these multinational companies to concede to their demands or is there some substance in these accusations?

⁴⁵ Enron filed the largest bankruptcy in US history, electronically at 2 p.m, Sunday, December 2, 2001 (McClellan & Elkind, 2003:405)

To understand this situation better, it is worth noting that there are no international laws that oblige a corporation to respect human rights⁴⁶ but the United Nations Committee on Transnational corporations has developed a code of conduct that places a responsibility on companies to respect human rights.⁴⁷ The reference to human rights in the said UN code requires companies to respect the UN's Universal Declaration of Human Rights as a moral minimum. The international community too supported the UN code at the World Economic Forum, Davos, 1989 by working out an acceptable code of behaviour for corporations. The code announced at the World Economic Forum, Davos was quantified in a survey carried out by the University of Notre Dame and Price Waterhouse Coopers.⁴⁸ These two codes of conduct (UN and the World Economic forum) are not legally binding on corporations but they spell out the expectations of the global stakeholder community. The global stakeholder expects that security forces called in by a company in order to protect company assets and employees in situations of stakeholder demonstrations and protests shall not use unreasonable force.⁴⁹ If the security forces use unreasonable means to control and quell stakeholder protests to a point that it encroaches upon a citizen's fundamental rights (as enshrined in the UN's Universal Declaration of Human Rights), then it shall be considered as an excess use of force. As a result the corporation will bear the responsibility for the actions of those security forces. Therefore, in situations when a company faces stakeholder protest (that may or may not turn violent) and the company calls for help from security forces to protect its property and lives of employees etc., the company in question becomes morally responsible for excesses (if any) committed by the security forces on the protestors. Some of the excesses committed on protesting stakeholders in India and Nigeria range from severe beatings, illegal detention, arbitrary arrests, bulldozing and burning their homes, indiscriminate shootings and killings. Human Rights Watch considers these incidents as human rights violations committed on behalf of the companies by the security forces.

Besides the accusations of human rights violations, in both cases, the companies faced allegations of corruption and bribery in the media and from various stakeholder

⁴⁶ Human Rights Watch in their report against the Dabhol Power Corporation discusses this aspect. Accessed on May 28, 2003 from <http://www.hrw.org/reports/1999/enron/enron7-0.html>

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid.

groups. These allegations find credence because the decisions and actions by the security forces, the political and administrative structures in both India and Nigeria appeared to consistently favour the interests of these two companies rather than demonstrate a balanced view. This will be apparent from the foregoing discussion of the actual events in both cases.

Corporations with transnational and multinational operations can adversely affect stakeholder interests in many ways. However, the discussion in this chapter is limited to corruption-related situations where human rights and environmental issues are involved. Companies who subscribe to good stakeholder management practices adopt company policies supported by an organisational culture that responds to stakeholders with a commitment to ensure good stakeholder outcomes. While those companies who use the trappings of corporate social responsibility as a public relations device (in documents and media statements) usually possess an organisational culture of deception and avoidance of stakeholder issues. Good stakeholder outcomes are not possible in such cases. Thus, the acid test of successful CSR⁵⁰ is based on the outcomes of a company's decision-making policies (Wartick and Wood, 1998:17). Hypothetically, if the CRDM model was made available to the decision-making managers in these two cases, and assuming they possessed an ethical disposition, the use of the CRDM model in both cases (Shell and Enron) would have prevented the alleged occurrences of human rights abuse and environmental degradation.

The Shell Example:

Let us consider the example of Shell's Nigerian operations in terms of the Wartick and Wood CSP⁵¹ model and the CRDM model proposed in this thesis. Royal Dutch Shell started its Nigerian operations in 1937 and struck oil in the Niger Delta in 1958 (Hill, 1997: C90). The Niger Delta largely comprised of land belonging to the Ogoni tribe. Most of the Ogoni were farmers and fishermen dependent on land for their livelihood. Under Nigerian law all minerals or fossil fuels discovered by oil companies belonged to the government of Nigeria. Oil was discovered on land that belonged to the Ogoni. Wherever applicable (presence of oil deposits), the land was taken over by the government and handed over to the oil companies. The Government

⁵⁰ Corporate Social Responsibility

⁵¹ Corporate Social Performance

of Nigeria became a partner with the oil companies by virtue of providing the land with oil deposits to the oil companies. The land compensation policy under the Nigerian law called Land Reform Act, 1978 provided compensation to the landholder (whose land was taken over for oil drilling purposes) to the extent of the monetary value of the crops standing on the land or any dwelling unit on the land but not for the actual value of land (Manby, 2000:5). This compensation law was grossly unfair. Thus, land was taken from the Ogoni with practically no compensation. Whatever land was left with the Ogoni for sustaining their means of livelihood as farmers and fishermen bore the brunt of Shell's substandard environmental practices.

The environmental costs of Shell's oil production in the Ogoni region was largely borne by the Ogoni in terms of loss of their livelihood⁵² due to oil spillage, oil waste dumping and gas flaring. Between 1970 and 1982, 1,581 incidents of oil spillage were documented in Nigeria⁵³ and largely attributed to Shell's operations. This continued to occur as is documented in an independent record of Shell's spills from 1982 to 1992 amounting to 1,626,000 gallons from the company's Nigerian operations in 27 separate incidents. It is pertinent to note that out of the number of oil spills recorded from Shell, a company which operates in 100 countries, 40% was in Nigeria.”⁵⁴

Shell's Nigerian operations and concern for the environment were based on dual standards. Shell applied different standards in home country United Kingdom vis-à-vis Nigeria. For example, “for Shell's pipeline from Stanlow in Cheshire to Moss Moran in Scotland, 17 different environmental surveys were commissioned before a single turf was cut. A detailed Environmental Assessment Impact covered every measure of the (pipeline) route. Elaborate measures were taken to avoid lasting disfiguring and the route was diverted in several places to accommodate environmental concerns.”⁵⁵ On the other hand the Ogoni had never seen, let alone be consulted over, an environmental impact assessment.⁵⁶ Shell's lackadaisical approach to environmental issues in Nigeria is substantiated by yet another example. “US environmental regulations completely prohibit the discharge of produced water or

⁵² A fundamental right as per UN Declaration of Universal Rights.

⁵³ <http://www.american.edu/TED/OGONI.HTMP> accessed on June 18, 2003

⁵⁴ <http://www.american.edu/TED/OGONI.HTMP> accessed on June 18, 2003

⁵⁵ Ibid.

⁵⁶ Ibid.

drilling mud from onshore facilities into surface-water bodies; produced water has to be re-injected for recovery or injected into disposal wells, while drilling mud has to be land filled” (Nwankwo and Irrechukwu, 1981). However in Nigeria, oil companies (Shell) often dispose of wastes from oil drilling directly into fresh-water bodies, or do not follow proper pollution-reducing techniques⁵⁷ to the detriment of the land and the Ogoni people. As a result of Shell’s operations in the Ogoni region, the tropical rain forest in the northern reaches of the Delta and the mangrove vegetation to the south have been seriously damaged (Hutchful, 1985).

The company was also accused of engaging in “widespread ecological disturbances, including explosions from seismic surveys, pollution from pipeline leaks, blowouts, drilling fluids and refinery effluents, and land alienation and disruption of the natural terrain from construction of industry infrastructure and installations” (Hutchful, 1985). Shell’s dual standards between home country and host country environmental practices are apparent from the aforesaid discussion. Moreover, Shell had neither time nor inclination to attend to oil spillage cases to the detriment of the Ogoni. In an oil spillage case that had occurred in 1960s at Ebubu, Shell had not attended to it even till 1993 (Hill, 1997).

Shell and the Ogoni:

Although the Ogoni paid the ecological price for Shell’s oil production in Ogoni land, the Ogoni got practically nothing in return for the exploitation of their land and natural resources. Since 1958, the company had extracted about \$ 30 billion of oil from the region (Hill, 1997: C 90). In 1990s, the Ogoni were about 500,000 people amongst a Nigerian population of 110 million (Hill, 1997:C89) with no political voice as an ethnic minority under a dictatorial military regime that controlled power in Nigeria. Out of Shell’s 5,000 employees only 85 were Ogoni (Hill, 1997: C90) and the community supposedly received 1.5% of the oil revenue from the government of Nigeria between 1982 and 1991 and from 1992 the government claimed to have raised it to 3% of the revenue (Hill, 1997:C90). However, the Ogoni claimed that they had seen no improvement in their region. They had access to one unfinished hospital

⁵⁷ Ibid.

and some government schools, which were rarely open due to non-payment of teaching staff (Hill, 1997).

Hutchful (1985) has described the plight of the Ogoni in these words “there is an almost total absence of schools, drinking water, electricity, medical care, and roads in many peasant communities.” In contrast, the company’s operations were predominantly on land in the Ogoni region with five major oilfields. Therefore, the Ogoni under the leadership of noted author and playwright Ken Saro-Wiwa as spokesperson sought self-determination, a share in the oil revenues generated from their region and compensation for environmental damage due to oil spills from oil pipelines (Hill, 1997). They submitted their demand in the form of a bill of rights to the Nigerian government and to Shell Petroleum Development Company (SPDC). Neither party, who were owners of SPDC, responded. On January 4, 1993, the MOSOP leadership declared Shell as *persona non grata* at a mass rally attended by 300,000 people or 60% of the Ogoni population. The Ogoni claimed payment of a sum of \$ 6 billion in rent and royalties and \$ 4 billion for environmental degradation failing which SPDC would have to quit drilling operations in Ogoni region (Wheeler, Fabig & Boele, 2004). After submitting the claim and expiry of 30 days, the region witnessed widespread protests and disturbances. Although MOSOP’s official policy was one of non-violent protest, and most demonstrations were disciplined (Manby, 2000:4), Shell’s facilities in the Ogoni region sustained damages directly attributable to vandalism and sabotage amounting to \$ 42 million (as per Shell’s estimates) during the years 1993-1995 (Lawrence, 2002:10).

During the same period (1993-1995) General Sani Abacha who was in power, created the notorious ‘Rivers State Internal Task Force’ specifically to deal with the situation in Ogoni and suppress the MOSOP campaign (Manby, 2000:5). Whenever these protests appeared to be unsafe for the company property and personnel, Shell called for security forces (Rivers State Internal Task Force also known as the mobile police) from time to time to protect company property and lives. However, Shell failed to ensure that the security forces did not go to the point of extreme human rights violations including killings of protestors as it occurred. Human Rights Watch, the international body for human rights has documented on its web site Shell’s

involvement in human rights abuses by the Nigerian security forces. The following are two such incidents amongst many:

a) The most serious case in which an oil company is directly implicated in security force abuses is the incident at Umuechem in 1990. Shell made a written and explicit request for protection from the Mobile Police, leading to the killing of eighty unarmed civilians and destruction of hundreds of homes. Shell has declared this incident as “regrettable and tragic” and decided to never call for Mobile Police protection.⁵⁸

b) In August 1995 at Iko, Akwa Ibom State, a community where a defective gas flare had caused significant damage, ‘Western Geophysical’ a contractor of Shell requested naval assistance to recover boats taken by youths who wanted to obtain benefits from the contractor, including employment. Following the naval intervention, Mobile Police came to the village and assaulted numerous villagers, beating to death a teacher who had acted as an interpreter in negotiations between Western Geophysical and the community. Shell has stated to Human Rights Watch that it does not call for military protection, but justified calling the navy in this case due to the terrain; it stated that the Mobile Police had been called by the navy and not by Shell or its contractor. In its detailed response Shell did not report that the company or its contractor had made any attempt to protest the Mobile Police action, simply reporting that “this incident is unrelated to Western’s seismic activities.”⁵⁹

Human Rights Watch is of the opinion that “calling for security force protection increases the responsibility of the oil company to ensure that intervention does not result in human rights violations; but even if the security forces have acted on their behalf without a specific company request for assistance, companies cannot be indifferent to resulting abuse.”⁶⁰ Yet in the great majority of cases the oil companies in Nigeria do not monitor or protest human rights violations by the security forces against those who have raised concerns about environmental problems, requested financial compensation or employment, protested oil company activity, or threatened oil production. In some high-profile cases of detention, one or two oil companies have, under consumer pressure in Europe and the U.S., made public statements, but the great majority go unrecorded. In none of the cases of abuse researched by Human

⁵⁸ http://www.hrw.org/reports/1999/nigeria/Nigew991-01.htm#P234_42143 accessed on June 18, 2003

⁵⁹ http://www.hrw.org/reports/1999/nigeria/Nigew991-01.htm#P234_42143 accessed on June 18, 2003

⁶⁰ Ibid

Rights Watch, that had not reached the international press, did any of the oil companies indicate that they had registered concern with the authorities.⁶¹ In the cases reviewed, it was generally only after the behaviour of the Nigerian authorities had embarrassed the oil companies on the international stage that action of any kind ensued on behalf of those who were abused by the security forces. In other cases, the oil companies said they were ignorant of arrests or beatings that had occurred, although some concerned quite major incidents at their facilities.⁶²

The Hanging of Ken Saro-Wiwa:

The hanging of Ken Saro-Wiwa was the final act on part of the Nigerian military junta that resulted in widespread international stakeholder protest against Shell and Nigeria. On November 10, 1995 Ken Saro-Wiwa, the leader of MOSOP (Movement for the Survival of the Ogoni People) and eight other activists of the Ogoni tribe were executed by the Nigerian military junta of General Abacha on charges of murder of some moderate Ogoni activists, although the charges were never proved. According to Human Rights Watch two witnesses were bribed by Shell to give false testimony against Ken Saro-Wiwa and others in the proceedings.⁶³ A Nigerian military tribunal conducted the entire judicial proceedings termed as a “sham trial” by observers (Hill, 1997:C89). Saro-Wiwa’s defense lawyers resigned in disgust, as it was clear to them that the proceedings were nothing but a farce (Hill, 1997: C89). The International stakeholder community condemned this act on part of the Nigerian military dictatorship of Gen. Abacha and condemned Shell Nigeria’s complicity in the affair as well as the company’s inability to plead for clemency for Ken Saro-Wiwa inspite of its enormous influence with the Nigerian rulers. A series of protests and boycott followed at the international level with several attacks on Shell offices and establishments around the world.

So what went wrong with Shell and its managers, especially when the company was considered as one of the most profitable companies on earth. The company’s revenues exceeded \$ 130 billion (Hill, 1997:C90) during the same period. Shell’s Nigeria operations contributed 11 to 12 % of the company’s global output, earning Shell a net

⁶¹ Ibid

⁶² Ibid

⁶³ Ibid

income of USD\$ 200 million (Hill, 1997: C90). With such excellent economic performance Shell stakeholder policies in Nigeria had failed as it was accused of serious human rights abuse. The management's decision-making process was seriously flawed and lacked stakeholder commitment. Shell executives considered all important decisions in the economic context alone, far removed from the reality of environmental damage to the Ogoni's homeland, loss of means of their livelihood (violation of a fundamental right), the atrocities committed by the Nigerian security forces in protecting Shell property and the hanging of Ken Saro-Wiwa, the Ogoni leader.

If we consider the events in this case within the framework of Wartick & Wood's Corporate Social Performance Model, the social outcomes are negative for its stakeholders. Thus, the company failed in its corporate social responsibility commitments. Hypothetically, if the CRDM model was available to Shell's decision-making executives, it could have been applied thus:

(a) The Nigerian government had adopted an unfair land acquisition and compensation process. This was a corrupt act in itself. By definition, active corruption includes corrupt acts. In terms of the CRDM model, Shell should *not* have accepted the land for oil exploration from the Nigerian government since it would amount to taking part in active corruption. However, if it did want to use the land then it could have prevailed upon the Nigerian government to adequately compensate the Ogoni before the company started its commercial drilling operations.⁶⁴

(b) Shell was obliged to the Ogoni not to destroy their means of livelihood by using substandard environmental practices as it did. This resulted in loss of livelihood for many Ogoni (right to subsistence is a fundamental human right) as the land was no longer fit for agriculture or fishing. The company was aware that it was using substandard environmental practices because it adopted a different procedure in United Kingdom (home country). These deliberate dual standards are a corrupt practice falling under the classification of active corruption. In terms of the CRDM model, the answer would be a "NO" to Shell's substandard environmental practices.

⁶⁴ This is a historical problem. The Ogoni lands were acquired at a time (1958) when the concept of stakeholder rights did not exist. However, Shell could have been dealt with the land compensation issue in later years when global corporations were being asked to be socially responsible.

(c) When the Ogoni approached Shell for compensation and redressal, the company could have worked out the extent of the environmental damage and attended to it through various means of conciliation. Instead they sought protection from a corrupt military regime in Nigeria who was willing to support Shell in exchange for some corrupt gains. This again amounted to active corruption on part of Shell. In terms of the CRDM model, the answer would again be a “NO” in such a situation.

(d) When the Ogoni protested in large numbers and declared Shell as ‘*persona non grata*’, Shell was obliged to work out solutions and not let stakeholder dissatisfaction take the form of protests that required Shell to call in security forces for protection. By calling security forces, the company became responsible for the brutalities committed by security forces (as per Human Rights Watch reports). Stakeholder dissatisfaction to this extent comprised of a series of acts involving active corruption on part of Shell. The answer would be a “NO” to calling security forces and to all that led to this situation.

(e) Shell could not have conducted business in the Ogoni region for 30 years without connivance and corrupt understanding with the successive political and administrative structures in Nigeria. This again is an indicator of active corruption on part of Shell. The answer would be a “NO” to all these acts and the manner in which Shell conducted itself for 30 years in Nigeria.

(f) Shell was accused of bribing witnesses that resulted in the unjust hanging of Ken Saro-Wiwa by the military regime. This is another obvious situation where bribes should not have been paid (if allegations are true) as it *inter-alia* violated Ken Saro-Wiwa’s right to a fair trial (a fundamental human right). This too is a case of active corruption on part of the company. The answer in terms of the CRDM model would be a “NO” to such an act.

In the Shell case, the CRDM model finds further strength in the fact that it is only after the Ogoni experience and the extensive protests and negative publicity that Shell faced, the company acknowledged the importance of respect for human rights in the business decision-making process. Shell had to close oil-drilling operations in the Ogoni region as a result of the Ogoni boycott and the incidents that followed. The company has not been able to resume operations in the Ogoni region at the time of

writing this thesis. However, what Shell appears to have done is taken on board two policies, which they publicly declare⁶⁵:

- a) Human Rights training for their executives
- b) A policy of 'No bribery'

These two affirmations (whether genuine or intended as a public relations device) by a global company of Shell's size is confirmation of the practical application of the CRDM model in corruption-related situations involving human rights and environmental issues. This is also a typical case of truth prevailing only after destruction.

The Enron Example:

Enron is another case of a company whose stakeholder practices did not result in good stakeholder outcomes. Enron faced accusations of corruption and bribery from the Indian media and stakeholder groups. Human Rights Watch accused Enron's Dabhol Power Company of human rights abuses at Dabhol. The company's response was in keeping with its organizational culture of deceit, manipulation and lobbying with politicians. True to its prevalent organizational culture, Enron dealt with stakeholder protests in Dabhol by trouble shooting i.e. lobbying with politicians in India (McClellan & Elkind, 2003), disseminating biased information through newspapers that were bribed, and by purchasing the administrative/ police machinery through bribery to serve the company's interest (Prashad, 2002).

Later, the parent company in USA filed for the largest voluntary bankruptcy in US corporate history. The immediate cause attributed to Enron's downfall at Wall Street is a result of its financial skullduggery that led to the bankruptcy proceedings in December 2001. Almost every work that researches the Enron story McClellan & Elkind (2003); Swartz & Watkins (2003); Jickling (2002); Seitzinger, Morris, Jickling (2002); Anderson (2002); Shorter (2002); Maskell & Whitaker (2002); Purcell (2002); Brumbaugh (2002); emphatically speaks of the company's financial failings in various aspects, fraud committed by its employees and directors, corrupt understanding between the company and politicians in USA and around the world. Many of these works concentrate on reporting actual events that led to the downfall of

⁶⁵ On Shell's website www.Shell.com

Enron and the impact on the financial markets and the accounting profession. But it is surprising that except for Prashad (2002), none of the aforementioned authors make a serious attempt to explore the role of corruption, human rights violations and environmental damage inflicted by the company in course of its operations in India, Brazil or elsewhere. This oversight speaks of us as a society, whose definition of success and failure still lingers within the halls of stock markets, observing the daily movement of stock prices, adding or depleting ‘shareholder value’ in terms of narrow financial performance.

Although the genuine adoption of Triple Bottom Line Reporting was expected from companies who enjoyed the status and size of Enron, it is sad that the law enforcement agencies investigating Enron have not paid serious attention to allegations of human rights violations in India by Enron’s subsidiary nor investigated the environmental damage inflicted by Enron in Brazil. When a company displays no commitment to human rights issues (as in India) and environmental issues (as in Brazil) it is a matter of time before the same company will have no qualms in cheating, lying and defrauding investors and financial markets. While doing so, some fail and collapse as Enron did and some carry on as “successful” companies. The Enron collapse has hit the old (pension funds), the weak (small investors) and Enron’s employees the hardest amongst members of society, thus inflicting enormous human pain and suffering. The company’s collapse in December 2001 can be linked to Enron’s inherent corporate culture of moral bankruptcy demonstrated much earlier in India and Brazil. This discussion is limited to the Dabhol case in India with a view to find substantiation for the concept of CRDM and the proposed CRDM model in the multinational business environment.

The Dabhol Power Plant Case: ⁶⁶

Background: *Enron* International, the world’s most successful energy company came to India to set up a \$ 2.8 billion power plant during the 1990’s (McClellan & Elkind, 2003). This power project was going to be the single largest foreign direct investment in India (McClellan & Elkind, 2003). During the 1992 US visit by Indian Prime Minister Narashima Rao, Enron was invited to set up independent power projects in

⁶⁶ Used as a teaching case for Master of Engineering Management students by the author.

India. This was a major policy shift on part of the government of India. India badly needed power and projects that could meet the power requirements of a developing India. Most parts of India were suffering from power shortages right from 1970s. Very little was done to address the power shortages faced by the various states in India between 1970 and 1990. Industrial development was hampered due to power shortages.

The development of the power sector in independent India (post 1947) was primarily based on a socialistic pattern of the government's five-year planning. The first Industrial policy resolution of 1951 reserved the power sector for government investment restricting private sector from investing in power. Subsequent five-year plans continued in the same socialistic tradition and regulated industries closely with a series of licensing and permit requirements. Ostensibly, these requirements were meant to protect the interest of the common Indian but in practice these requirements led to a situation called the 'License Raj' (the rule of licenses) in the hands of Indian bureaucrats and politicians. Industrial opportunities were unevenly distributed between the state owned enterprises or the public sector and the privately owned enterprises or the private sector. Development of infrastructure facilities such as power was largely entrusted to the public sector through licensing requirements that were designed to keep private enterprise away from such projects. Mahatma Gandhi's *swadeshi* (made in India) movement adopted during the independence struggle against the British Raj served as the *raison d'être* for promoting public sector enterprises. These newly created public sector (government owned) enterprises were established with a view to achieving self-reliance in production ignoring commercial logic to the point that such enterprises could run at a loss eternally. Their continuity was considered essential to the greater interest and welfare of the nation to achieve Gandhian self-reliance at all cost. The public sector was of vital importance to the survival of the then prevalent ideological belief of a socialistic pattern of economy.

Public sector enterprises also provided politicians with some scope for embezzling funds, providing jobs and dispensing favours to cronies. For many a key politician, the setting up of major projects under the public sector banner had the potential of safeguarding their election prospects in their electoral constituencies. Most of these state owned enterprises lost money over the years, the bulk of them being doled out

by government funds diverted from other compelling requirements of a developing nation but this drain of scarce resources was not a deterrent to the short-sighted theory of self reliance.

By 1970s all banks were nationalized and most foreign companies operating in India were required to dilute their equity holdings to 49%. Those who refused to do so such as IBM or Coca-Cola were forced to close their business in India.⁶⁷ Between 1977 and 1990, the Indian political scenario underwent significant irreversible changes with the weakening of the Congress Party that had held power from a position of dictatorial strength since 1947 till 1977. After the elections in 1990, Prime Narashima Rao formed a federal government with coalition partners for the first time in the history of the Congress party in independent India.

During June 1991, the Indian rupee was devalued twice within a span of 3 days by 24.5%. The country was facing an external debt crisis and the government negotiated a stand-by facility with the IMF to avert this crisis. During the same month, for the first time in independent India's lifetime, overseas exporters were seeking double and triple confirmation of letters of credit opened by Indian banks before they shipped goods to India. There was no other way out for India but to abandon the *swadeshi* theme under the pressures of international financial institutions such as IMF and World Bank. Thus, India under Prime Minister Narashima Rao and his Finance Minister, Dr. Manmohan Singh (London School of Economics alumni) opened up the economy to foreign investors by adopting a policy of liberalisation with a nation's back against the wall for survival. The economy could not sustain any more of *swadeshi* and socialistic pattern of industrial development that had led to this moment of reckoning. The public sector and the government could not function without dole outs from IMF and World Bank.

The opening up of the economy meant that it was time for the Indian political structure to organise new sources of illegitimate funds to support political parties, electoral campaigns and control power. The opening up of the economy was intended to bring massive foreign investment into India. Most of the investment was expected

⁶⁷ George Fernandes, Industries Minister in the Janata Party led federal government forced both IBM and Coca-Cola to leave India in 1977.

from major multinationals that could prove to be long-term source of funds for the politicians and the concurrent political structure, if carefully cultivated. Enron was thus invited to set up a three billion dollar power plant in India not only because Enron was an highly successful company but Enron was likely to co-operate with the rent-seeking machinations of the Indian political structure comprising of both ruling parties and parties in opposition as later events indicate.

Fast Track Entry: Enron Corporation was assured fast track entry into India and that too without competitive bidding⁶⁸ by the Indian government. Enron's success strategy in India therefore depended upon the continued patronage and assistance from the political machinery that had favoured its entry into India. During May/ June 1992 a senior Indian delegation met Enron officials inviting Enron to set up power projects in India. Almost immediately after the delegation's trip to USA, the Secretary of Power at the Centre (Indian central government) informed the Maharashtra State Electricity Board (MSEB) about a visit by Enron officials to choose a site for Enron's power project along the coast of Maharashtra. Five days later, representatives of Enron and General Electric arrived in New Delhi and met with officials of the central government about the proposed project. Three days after that, the Enron delegation arrived in Bombay (Maharashtra's capital) and reviewed sites along the coast choosing Dabhol as the site for the project. On June 20, 1992 a MOU was signed between the Government of Maharashtra and Dabhol Power Corporation (joint venture of Enron, General Electric and Bechtel Corporation).

Although the MOU was not a legally binding document, the deal-making process was criticised for its haste, its lack of transparency, and the absence of competitive bidding. The process would form the basis for a widespread belief that corruption played a role in the project's implementation. Later in 1995 when the opposition parties came to power (i.e. the Shiv Sena-BJP combine) a cabinet sub-committee was formed under the chairmanship of Mr. Gopinath Munde (Deputy Chief Minister of Maharashtra) to investigate the Enron affair. The Munde Committee described the above actions as: *Thus, in a matter of less than 3 days after its (the delegation's) arrival in Bombay, a MOU was signed between Enron and MSEB in a matter*

⁶⁸ Munde Report, 1995 (Report of the Cabinet Sub-Committee (of the State of Maharashtra) to review the Dabhol Power project in light of media allegations of corruption).

involving a project value of over Rs. 10,000 crores⁶⁹ (almost \$ 3 billion) at the time, with entirely imported fuel and largely imported equipment, in which, admittedly, no one in the government had expertise or experience.⁷⁰

Enron's fast track entry without a competitive bidding process led to allegations of corruption by the opposition parties and the media. The hastily signed MOU between Enron and the State government of Maharashtra did not stand up to a review by the Central Electricity Authority (a government body to oversee the implementation of the Indian Electricity Supply Act, 1948 and related matters)

Review by the Central Electricity Authority (CEA): The CEA concluded that the entire agreement was "one sided"⁷¹ in favour of Enron. Their experts pointed out that the MOU did not provide specific details of project costs as required under the Indian law. The MOU did not specify when the twenty-year contract (and its associated payments) would begin, and when the electricity would be available, or when the contract was taken to have been signed. According to the CEA, the structure of payments to Enron was a departure from the "existing norms"⁷² and the price of power was high. The CEA observed that, there was no provision to audit the project over time to ensure that the price MSEB paid to the company was commensurate to the actual cost of electricity.⁷³

World Bank Review: The World Bank reviewed the Dabhol project at the request of the Maharashtra government and concluded that the government had not provided an overall economic justification of this project.⁷⁴ The World Bank further pointed out that the MOU required MSEB⁷⁵ to pay DPC within sixty days, but the company had no limitations on actual supply of electricity, importing fuel, construction or financing. It implied that MSEB would have to pay Dabhol Power Company for

⁶⁹ One crore rupees equal to Rs. 10 million.

⁷⁰ Munde Report, 1995 (Report of the Cabinet Sub-Committee (of the State of Maharashtra) to review the Dabhol Power project in light of media allegations of corruption).

⁷¹ CEA's comments as quoted in Human Rights Watch Report accessed on 28 May 2003 from <http://www.hrw.org/reports/1999/enron/enron2-0.html>

⁷² Ibid.

⁷³ Ibid

⁷⁴ Letter from World Bank on the file of Human Rights Watch as mentioned in Human Rights Watch Report accessed on 28 May 2003 from <http://www.hrw.org/reports/1999/enron/enron2-0.html>

⁷⁵ Maharashtra State Electricity Board

electricity at a prescribed rate, regardless of whether the electricity was actually available. The project was also criticised by the World Bank for being “one sided”⁷⁶ in favour of Enron. Later in April 1993 the World Bank turned down the request from Government of India and Enron for financing the project. The World Bank held the view that the Enron project was “not economically viable”⁷⁷ as conveyed in a letter written by World Bank country director for India to the Indian Finance Secretary.

Amendment of the Electricity Supply Act, 1948: Simultaneously, Enron used the services of Linklaters and Paines, an UK based firm of solicitors to study the Indian Electricity Supply Act, 1948 and recommend changes to the Electricity Supply Act in order to protect the company’s interest. The U.K. firm of solicitors submitted a report to the Indian government titled: “Problems Concerning the Application of the Indian Electricity Acts.”⁷⁸ This report recommended changes in Indian laws pertaining to accounting procedures, purchasing agreements, judicial and public scrutiny in order to facilitate Enron’s project. The recommendations were designed to make Enron’s position less open to public and government scrutiny. Enron’s proposal to amend the laws of a sovereign nation is an attempt to circumvent a duty cast upon Enron as an Electricity company by the Indian Electricity Supply Act 1948 that would require Enron, “to operate and maintain in the most efficient and economical manner, its generating stations” in order to supply cost efficient electricity to the Indian consumer. The irony of the whole affair strikes one when one finds MSEB (Maharashtra State Electricity Board) officials suggesting, in writing, that Enron be exempted from the above duty cast by the Electricity Supply Act.⁷⁹

Enron’s project costs: incredibly high: The lack of scrutiny sought by Enron was evident in its pattern of correspondence with the Central Electricity Authority, which queried Enron on its costs structure. A table of comparative project costs of seven different projects that were under process in India at that point in time (see figure 7) confirms Enron’s project cost per megawatt of electricity generated is much higher than the other gas based projects. There is no evidence of economy of scale that is

⁷⁶ Letter from World Bank on the file of Human Rights Watch as mentioned in Human Rights Watch Report accessed on 28 May 2003 from <http://www.hrw.org/reports/1999/enron/enron2-0.html>

⁷⁷ Ibid

⁷⁸ Accessed from Human Rights Watch Report accessed on 28 May 2003 from <http://www.hrw.org/reports/1999/enron/enron2-0.html>

⁷⁹ Ibid.

usually expected from a large project. This can also lead one to conclude that a smaller project would be more viable from the Indian electricity consumer's perspective, especially if a large project is unable to generate economies of scale. Therefore, it leaves Enron's intentions of seeking amendment to the Indian Electricity Supply Act 1948, to question. Enron was aware that its cost of generating electricity was higher than the prevailing cost in India, which Enron attributed to new technology. The Indian Electric Supply Act had to be circumvented in order to charge the Indian consumer more than what was being paid by them. This machination on Enron's part also indicates possibility of a corrupt understanding between Enron and the Indian administrative and political structure.

Figure 8: Projects in India under process that time

<i>Project</i>	<i>Capacity Megawatts</i>	<i>Type Of Fuel</i>	<i>Cost per megawatt (Rs. in Crores)</i>
<i>Enron</i>	<i>2,015</i>	<i>Gas (LNG)</i>	<i>4.49</i>
<i>Jagrupada</i>	<i>235</i>	<i>Gas</i>	<i>3.52</i>
<i>Godavari</i>	<i>208</i>	<i>Gas</i>	<i>3.60</i>
<i>Vishakapatnam</i>	<i>1,000</i>	<i>Coal</i>	<i>5.81</i>
<i>Managalore</i>	<i>1,000</i>	<i>Coal</i>	<i>5.08</i>
<i>IB Valley</i>	<i>420</i>	<i>Coal</i>	<i>4.82</i>
<i>Zero Unit NLC</i>	<i>250</i>	<i>Lignite</i>	<i>4.50</i>

(Source: The Munde Report, 1995)

Impact on stakeholders and Land acquisition process: The Dabhol power project site was expected to directly displace 2000 people and indirectly 92,000 people from the agricultural villages of Aareygaon, Borbatlewadi, Katalwadi, Nagewadi, Pawarsarkari, Ranavi and the fishing villages of Anjanvel and Veldur. These communities were dependent on natural resources and occupations such as agriculture and fishing.⁸⁰ Even, consultants employed by the Dabhol Power Company were of the opinion that if land acquisition for the project went ahead, the environmental impact

⁸⁰ "Enron: The Power to Do it All", Indranet journal (Bombay), Vol 3, No2-4, 1994, p. 10-11 (Centre for Holistic Studies)

of construction and the project's operations would affect the entire populations of these villages.⁸¹

On March 12, 1993, during a meeting between Enron officials and the State government, a discussion took place about the project's land requirements and its impact upon the local communities. According to the minutes of the meeting, the government decided to begin acquiring land after consultations with the company, but not the public.⁸² The company was legally required to post a notice in the newspapers stating that it was constructing a power plant and that it would attend to any inquiries, complaints or concerns for a two-month period following the publication of the notice. This was in compliance with the Electricity Act, 1948.⁸³ The notification was published in local newspapers on September 21, 1993.⁸⁴ Upon expiry of the two-month period on November 21, 1993, the company sent a letter to the government of Maharashtra's Under Secretary of Energy, confirming that Enron had not received any objections in response to its notice in the local newspapers. Enron wrote, "It would, therefore, appear that the requirements of the section 29 of the Electricity Act have been met."⁸⁵ Enron lied in its correspondence with the Maharashtra State government; it suppressed the fact that the company had received thirty-four queries, complaints from NGOs, journalists, local residents whose land had been acquired as well as government officials within the two-month period. Most of these queries remained unattended on November 21, 1993. It is not possible for a multinational company to blatantly lie to a government body without connivance or support from within the administration at the highest levels.

Enron and human rights abuses: Due to Enron's lack of transparency in the land acquisition process local residents and NGOs started protests against the Dabhol project. By and large these protests were peaceful and confined to seeking answers from Enron. Some of these protests were led by noted environmentalist such as Medha Patkar and by some by local academics and social workers.⁸⁶ These

⁸¹ Ibid

⁸² Accessed from Human Rights Watch Report accessed on 28 May 2003 from <http://www.hrw.org/reports/1999/enron/enron2-0.html>

⁸³ Ibid.

⁸⁴ Ibid.

⁸⁵ Ibid.

⁸⁶ Ibid

demonstrations met with resistance from Enron's local contractors (local goons were given contracts by Enron for petty supplies and used by Enron to bully the villagers) and the police who were armed and spared no efforts to beat up protestors and make arbitrary arrests. The police monitored the demonstrations with a government helicopter being used as an operations control unit to direct police operations against protestors.⁸⁷ And in one instance the helicopter carried important government officials who surveyed the demonstrations and police operations. Although, Enron a US based company was aware of that the United Nations has made consistent attempts to educate multinationals to ensure that their business activities do not contribute to human rights violations, Enron chose otherwise.

According to Human Rights Watch, "there can be little question that the company and the police have operated in tandem against the protestors. The Dabhol Power Corporation pays the state forces that committed human rights violations; it provided other material support to these forces; and it failed to act on credible allegations that its own contractors were engaged in criminal activity that rose to the level of human rights violations due to the failure of the state to investigate the crimes."⁸⁸ Arbitrary arrests, illegal detention and torture, police beatings of protestors were a regular feature of the lives of many in the affected villages.

On June 3, 1997 a police raid was conducted on the fishing village of Veldur involving physical abuse of villagers and destruction of property.⁸⁹ The Supreme Court of India later held that this police raid *was* unconstitutional.⁹⁰ Human Rights Watch believes that the Dabhol Power Corporation—and its parent companies Enron, General Electric, and Bechtel are complicit in human rights violations by the Maharashtra State government. Human Rights Watch have concluded in their 166 page report that, "the Dabhol Power Corporation benefited directly from an official policy of suppressing dissent through the misuse of law, harassment of anti-Enron protest leaders and prominent environmental activists, and police practices ranging

⁸⁷ Ibid

⁸⁸ Ibid.

⁸⁹ Ibid.

⁹⁰ Ibid

from arbitrary to brutal.”⁹¹ Human Rights Watch based their findings by way of direct investigations in at least 30 demonstrations conducted by the villagers against Enron.

Allegations of illegal diversion of water supply from the villages to the Enron construction site were also found to be true by the same NGO.⁹² This in turn had a severe impact on the agricultural operations in the villages. Human Rights Watch is of the opinion that Dabhol Power Company benefited directly from an official policy of suppressing dissent through misuse of law, harassment of anti-Enron protest leaders and prominent environmental activists, and police practices ranging from arbitrary to brutal.⁹³

Allegations of Corruption and Bribery: It is difficult to prove that money changed hands for decisions made by politicians and bureaucrats in Enron’s entry and conduct of business in India. However, it can be safely concluded that Enron was determined to succeed at all costs and its above actions left little doubt that the company did not respect its stakeholders. Also Enron publicly claimed to have spent US \$ 20 million to educate Indian bureaucrats and the Indian people (McClellan & Elkind, 2003:81). This claim was interpreted by the Indian media as a euphemism for ‘bribes paid to Indian bureaucrats and politicians’ and Enron’s ingenuity in recording the expenditure in their accounting records to avoid prosecution in USA under FCPA. The aforesaid discussion does lend credence to the consistent allegations of corruption and bribery that Dabhol Power Company faced in India (Prashad, 2002; McClellan & Elkind, 2003; Swartz & Watkins, 2003).

The allegations of corruption and bribery had reached such a point that an opposition political party in the State of Maharashtra campaigned for the State elections vowing to “push Enron into the Arabian Sea” (McClellan & Elkind, 2003:81) if the people elected them to power. The political party did get elected in March 1995 and formed the Maharashtra State government. They instituted an enquiry that resulted in the Munde Report and as a consequence Enron’s Dabhol project faced its most crucial moment of survival. The Maharashtra government issued a work stoppage order on

⁹¹ Ibid.

⁹² Ibid.

⁹³ Ibid

August 3, 1995 because of “lack of transparency, alleged padded costs, and environmental hazards” (McClellan & Elkind, 2003:82)) sending Enron USA and Wall Street into a situation of controlled panic. However, what followed this event was a series of arm twisting and lobbying moves by Enron that included the arrival of Ms. Rebecca Mark (CEO of the Dabhol Power Company) in Mumbai, India. She stayed for a period of six weeks in India “negotiating” with people that mattered till a fresh agreement was signed and the work stoppage order lifted. On February 23, 1996, a revised agreement was signed between the government of Maharashtra and Enron (McClellan & Elkind, 2003:82), the government being represented by the same party who had vowed to “push Enron into the Arabian Sea” and had produced the Munde Report. Critics in India were not convinced and they continued to allege corruption because the returns on the project remained shockingly high at 30% per annum (McClellan & Elkind, 2003: 83), although the project was ostensibly re-negotiated by the government to make it feasible for the nation.

Enron’s entry left a bitter taste in the minds of the local people of Dabhol who had no means to fight such a company supported by the corrupt political and administrative structures around them. But stakeholder rejection meant that the Dabhol project consistently faced difficulties and could never achieve commercial production. The project is up for sale on an “as is where is basis” at the time of writing this thesis.

If we consider the events in this case within the framework of Wartick & Wood’s Corporate Social Performance Model, the social outcomes were negative for its stakeholders. Thus, the company failed in its corporate social responsibility commitments. Hypothetically, if the CRDM model was available to Enron’s decision-making executives, it could have been applied thus:

a) The Enron project was clearly going to displace a few thousand people and these people were likely to lose their means of livelihood. This was apparent from the opinion of even Enron’s own consultants. However, the company’s actions in dealing with this aspect were corrupt and allegedly involved bribe payments. This is active corruption. The answer would be a “NO” if the model was applied. Hypothetically, if Enron had dealt in a fair manner with the issue of displacement of the people of Dabhol, the project could have taken off much earlier.

b) Enron not only started work on land that was not obtained in a fair manner but also used the corrupt influence it had with the administration to tackle stakeholder protests that resulted in human rights violations. Under the CRDM process a company would not start a project on land that was acquired in an unfair manner nor use corrupt influence to treat stakeholders the way Enron did at Dabhol. This is ‘active corruption’ and the answer would be “NO” if the model is applied.

c) Besides, at every stage Enron appears to have been involved in ‘active corruption’. Events that raise doubts about the company’s active pursuance of corrupt practices are: fast track entry without competitive bidding, exorbitant power tariff, a one-sided MOU, attempt to seek amendment to the Electricity Act, change of stance by the opposition political party after assuming power at the state level.

Opposite end of the spectrum: Companies who resist corruption

It is a difficult task to name companies that resist corruption. Companies may claim to have resisted corruption to cover up some other issues and the same companies may later indulge in corrupt practices in some situations. Also company mergers and business takeovers, change in controlling stock ownership etc influence the entry or exit of a CEO and his or her management team. When such fundamental changes take place, it can result in a change in the overall organizational culture and stakeholder responses as well. A company that appears to be a model of virtues and appears to have successfully resisted corruption in current times may prove to be a fraud ridden company in the future.

However, there are companies who display ethical intent by way of a company code of ethics that are widely communicated both within and outside the organization such as the Tata group of companies from India. The Tata group has developed a code of conduct that relates to corruption. It was adopted by the group during 1999 and commits⁹⁴

not to give nor take any illicit payment, remuneration, gift, donation or comparable benefit to obtain business or favours; and not to give any donation to any government agency or its representatives to obtain favourable performance of official duties.

⁹⁴ Accessed from <http://www1.transparency.org/newsletters/99.2/corpnes.html>

A US based multinational company; Texas Instruments has built a reputation of being an ethical decision-maker. The company has won three major ethics awards (Ferrell et.al, 2002:184) and declares ethical commitment in excess of legal compliance issues. Amongst other issues, the company prohibits election campaign contributions to political parties (and in effect lobbying politicians), although the US federal law permits election contributions by companies (Ferrell et.al, 2002: 184-186).

Conclusion:

Thus, in the cases of Enron and Shell, the left-hand side of the CRDM model could have been used to achieve good social and company outcomes. Both companies pursued an active strategy of corrupt means to secure and retain business. The relevance of the CRDM process and the CRDM model proposed in this thesis is vindicated in both cases because stakeholder rejection occurred when companies involved, failed to take in to account the adverse impact of their corrupt actions on stakeholders. On the other hand, companies such as the Tata group in India and Texas Instruments in USA declare their intentions not to pursue corruption. In such cases the course of “active corruption” (left-hand side of the model) and passive corruption has been publicly rejected by them.

The application of the CRDM model might appear to be naïve in the context of the complexities of multinational and transnational business, but its usage will provide an orderly way of thinking to address the undisputed obligation of CSR on part of a decision-making manager and pre-empt stakeholder rejection.

Chapter Seven: CRDM in the wider Business World

Introduction:

In the previous chapter, the cases of Enron's Dabhol power project in India and Shell's operations in the Ogoni region of Nigeria, demonstrated the connection between a company's business decisions and its impact on the environment and human rights of stakeholders. As discussed in the previous chapter, there are no international laws that require a corporation to respect human rights. This could be because the 'UN Declaration of Human Rights' has not been ratified by all nations, and there are sovereign nations whose domestic law practices are contrary to the UN instrument (for example: beheading a person for committing adultery). However, when it comes to multinational companies, there is a strong expectation from the global stakeholder community that multinational corporations (who usually originate from first world democracies) shall respect human rights of their stakeholders in terms of the UN Code of Conduct for Transnational Companies.⁹⁵

Both Enron and Shell were highly successful multinational companies at that point in time, but both companies ended up with allegations of complicity in human rights violations and environmental degradation. Enron was accused of human rights violations,⁹⁶ disregard for the environment and destruction of means of livelihood of people at Dabhol, India. Shell, too, faced loss of company image, goodwill and attracted unprecedented negative response from the international community after the execution of Ken Saro-Wiwa. One of the major causes that led to such situations is the scant attention paid by decision-making managers to the strategic importance of such issues in a company's success. Decision-making managers of both Enron and Shell considered the economic implications of the events or a given situation and are likely to have succumbed to the rent-seeking behaviour of public officials in India and Nigeria as it appeared to be an easy way out. Paying a bribe may appear to be a short-term solution to a problem at hand, but that is not in the strategic interest of a multinational company in a host country. In both cases it is not possible to prove that

⁹⁵ Also agreed upon at the World Economic Forum, Davos in 1989.

⁹⁶ Human Rights Watch accused Enron and its partners of complicity in human rights violations at Dabhol in a 166-page report after extensive investigations in the manner in which Enron had conducted itself as discussed in previous chapter.

bribes were indeed paid but both companies did face allegations of corruption and bribery and stakeholder rejection.

To avoid situations of stakeholder rejection and consequent loss of company image and long term business, it would be worthwhile to determine whether the proposed CRDM model has practical relevance and utility in the real business world of corruption-related situations. A survey of seventy major multinational companies was conducted by the author at Mumbai, India (based on a pilot study conducted previously by the author during April and June 2002) to test the relevance of the CRDM model. This chapter discusses the survey, its findings and interprets the relevance of the findings subject to certain limitations.

The Study:

A sample of 70 prominent multinational companies and banks was drawn from a population of approximately 160 multinational companies listed on the Bombay Stock Exchange⁹⁷ and 20 foreign banks operating in India. Almost all these companies and banks are located in Mumbai the financial capital of India (Mumbai pays about half of India's income tax with a population of approximately 15 million). The companies were drawn from diverse industries such as banking, pharmaceuticals, engineering, electrical, electronics, oil and a range of consumer goods. Most of these companies commanded substantial market shares for their products and owned premium brands with a minimum turnover of I. Rs. 1 billion. Out of the 70 companies who were approached, 41 companies responded to the author, many of them after several phone calls and personal visits. The executives interviewed were at the levels of Chief Executive Officer or else senior managers dealing with public relations or involved in business promotion. The questionnaires administered were first mailed and then completed in person during personal interviews to ensure clarity of responses.

The purpose of this study was to secure an understanding of the relevance of the proposed CRDM model in terms of the decision-making process. Each component of the CRDM model was covered in the survey questionnaire such as 'active corruption', 'passive corruption' facilitating payments, payments made under extortion. Besides

⁹⁷ Source: Addresses of Companies: The Stock Exchange Mumbai, 2003 edition and 2004 edition.

these, certain other variables representing decision-making factors (such a fear of loss of business, actual loss of business when a bribe was not paid, responses to corrupt activities of the competitor as a consequence of losing business in the past) were included in the questionnaire. Also a few other variables such as personal attitudes to corruption and corruption legislation, the presence or absence of company policy with regard to corruption, the practice of gift-giving, its acceptance by public officials, payments to ‘organised crime’ were also explored. The most significant part of the survey explored perceptions of corporate executives to understand whether they felt that corruption could adversely affect human rights and sustainable development (see appendix V for the survey questionnaire and appendix VI for summary of results).

The study was conducted over a period of two years starting from April 2002 to April 2004 (an initial pilot study during April 2002, June 2002 covered 5 companies). India was selected for the following reasons:

1. India is ethnically, culturally, religiously, and socially a very heterogeneous country (Berg & Hotlbrugge, 2001).⁹⁸
2. Ease of access to the author to Mumbai and to multinational companies in Mumbai since he had lived in Mumbai and had been a Chartered Accountant for a number of years in Mumbai.
3. Multinational business has traditionally been comfortable in India due to its stable political atmosphere, its democratic institutions, and a large base of technical manpower. Therefore, a large sample would be accessible to the author.
4. Personal interviews could be conducted as per the convenience of the interviewees since the author could stay in Mumbai and meet the concerned persons from time to time.
5. The author’s first experience with conventional mailers marked survey (sent to US and Indian companies) drew no response whatsoever due to the sensitivity of the topic. This experience was in line with the opinion of corruption researchers such as Klitgaard (1988) who believes that obtaining corruption-related data is difficult. Hence the element of personal meeting was essential to break the ice and build an

⁹⁸ The authors Berg & Holtbrugge conducted a study of 12 German multinationals in India with a view to find out the ranking order of factors (by way of importance attached) in their Public Affairs Management in India. The results revealed that bribery was ranked number three in order of priority of these German companies. However, because 3 of the 12 companies declined to comment on the issue of bribery, Berg & Holtbrugge suspect that bribery should be ranked higher than number three.

atmosphere of trust between the person being interviewed and the author and this was possible at Mumbai due to the author’s personal network.

The Findings

a) Bribes asked for (passive corruption): The element of passive corruption or bribe demands that surveyed company executives faced both in India (their host country as they represented a multinational company in India) and in their respective home countries (parent company country) is as under:

Bribes asked for					
Country	Never	Rarely	Sometimes	Usually	Extremely frequently
Home Country	38	2	1	---	---
India-host country	1	3	21	13	3

Number of Respondents: 41 companies

We notice from the above that about 38 companies or 92% of the respondents had never been asked for a bribe in their home country. There are only three respondents out of the 41 respondents who have had some experience of a facing a bribe demand in their home country. Contrast this with the host country experience for the same respondents. Only one of the respondents has never faced a bribe demand while three of them have very rarely been asked for a bribe. However, the majority of respondents have faced demands i.e. 40 companies or 97.5 % of the surveyed companies have faced some bribe demand or the other. Out of these 40 companies who faced bribe demands, 21 companies have ‘sometimes’ been asked for bribes with another 13 companies who have been ‘usually’ asked for bribes. The difference between the home country and the host country situation is apparent in the experiences of the respondents.

b) Non-payment of bribe resulted in loss of business: There are situations when bribes are demanded and the actual securing of business by a multinational in host country (India) is dependent on whether the company is willing to pay or not. The resultant loss of business due to non-payments of bribes, amongst the surveyed companies is as under:

Non-payment of bribe, resulted in loss of business

Never	3
Rarely	3
Sometimes	9
Usually	26
Extremely frequently	Nil

Number of Respondents = 41 companies

From the above we notice that 26 companies or 63% of the companies usually lost business when they did not comply with bribe requests and another 9 companies or 22% lost business ‘sometimes’. Only 14% of companies i.e. 6 companies never lost or rarely lost business due to non-compliance with bribe requests.

c) Fear of Loss of Business: It was also worthwhile to check whether these companies were afraid of losing business due to non-payment of solicited bribes.

Level of fear	
Not at all	2
A rare chance	3
To an extent	23
A great extent	13

Number of respondent = 41 companies

About 11% (i.e. 2 companies) of the surveyed companies expressed no fear of losing business as against 89% (i.e. 36 companies) who were afraid of losing business in event of non-payment of solicited bribe. One multinational pharmaceutical company CEO confirmed that they no longer make any attempts to supply their products to government funded public hospitals, as they are not able to deal with the pressure of solicited bribes.

d) Bribes offered (active corruption): When a large number of companies may be losing business due to non-compliance with bribe requests it would be worthwhile to check whether there was a change in the behaviour of the companies who had earlier lost business. In short, it would be interesting to find out whether the companies later shifted their strategy to active corruption from a position of non-compliance with passive corruption.

Active Corruption
Companies that offered bribes due to the experience of losing business earlier

Never	6
Rarely	8
Sometimes	14
Usually	12
Extremely frequently	1

Number of Respondents = 41 companies

It is evident from the above that business managers who had earlier taken a stand of non-compliance with corrupt demands later chose to actively seek business by bribery or corruption as a matter of commercial prudence with commercial considerations overruling and over shadowing every other aspect of decision-making. Here we notice that about 66% or 27 companies chose to pay bribes or take part in corruption to secure business. This appears to have occurred due to the commercial considerations involved (the when in Rome approach, as in Francis, 1991) and due to the lack of ethical instruments that may lead to ethically relevant decision-making.

e) Facilitating payments and other payments actually made: A survey of payments made by these companies revealed that about 88% or 39 companies had made some form of facilitating payment or the other to lower level staff in public office. Only 5% or 2 companies claimed to have never made any facilitating payments. When it came to paying organized crime or extortionist, about 17% or 7 companies claimed to have made such payments while the majority said they have never made such payments. The responses are summarized as under:

Payments made					
Payments for	Never	Rarely	Sometimes	Usually	Extremely frequently
Company property/human life in danger	35	6	----	----	----
Facilitating payment	2	3	12	19	5
Organised Crime/extortion	34	5	2	---	----

Number of Respondents = 41 companies

f) Company Policy: From responses in the survey, most company executives appear to rely on company policy when it comes to corruption-related decision-making. The company policy may be expressly written or maybe unwritten. In one such case of a German multinational the respondent CEO clarified that the company's policy as

regards bribery is unwritten but they discourage bribery. When queried about the OECD anti-bribery convention, the CEO although aware of it said it was not necessary to write a policy that bribes were not to be paid. Contrary to understanding based on literature that issues such as feedback from subordinates play a major role, the findings confirm that feedback from subordinates is practically irrelevant. This in turn can mean that corruption-related decisions are taken at the highest levels mostly without consultation with subordinates. None of the respondents use any type of decision-making model for corruption-related situations. The respondents were queried on the existence of a company policy, and whether it mentions the negative impact of corruption. The summary of the findings are as under:

Question	YES	NO
Does Company Policy exist	33	8
Does the company policy mention the negative impact of corruption	3	37

Out of 41 respondents, one chose not to answer the second part of the question, hence we have 40 respondents to the second question. It is observed that over 80% (i.e. 33 companies) of the surveyed companies have a company policy as regards corruption but 90% (i.e. 37 companies) of the surveyed companies do not have anything mentioned about the negative impact of corruption in their policy.

The decision-making process was also explored from the perspective of typical factors (example: previous experience with corruption; feedback from sub-ordinates; personal discretion) that have been mentioned earlier in chapter three as well whether any kind of decision-making model was used. Although, majority of companies relied on company policy alone while dealing with situations of corruption and bribery, some companies used two to three of the decision-making components while none used any decision-making models to assist in the decision process. Therefore, in situations of corruption or bribery the manager refers to:

Company Policy	35
Previous Experience	8
Feedback from subordinates	1
Personal discretion	8
Decision-making model	nil
Any other	1*

Respondents = 41 companies * unwritten policy

g) Personal attitudes to corruption: One of the most essential parts of the survey was to understand the personal attitudes to corruption, as the success of any decision-making model will be determined by the personal attitudes of the decision-maker. The findings are as under:

Personal Attitudes to Corruption						
Question	Not at all	A rare chance	To an Extent	To a great extent	Totally	No Reply
Humans are by and large non-corrupt	----	4	25	11	1	NIL
Corruption cannot be completely eliminated	12	15	11	3	NIL	NIL
Can anti-corruption legislation eliminate corruption	NIL	11	21	8	1	NIL
Can anti-corruption legislation be successfully enforced	NIL	9	24	8	NIL	NIL

The majority of the respondents i.e. 87% or 37 respondents have faith that human beings are by and large non-corrupt. About the same percentage i.e. 38 respondents agree that corruption cannot be eliminated. Out of which, 12 respondents believe that corruption cannot be eliminated with another 15 respondents being of the opinion that elimination of corruption is a rare chance followed by 11 respondents who believe that corruption can be eliminated to some extent. The efficacy of anti-corruption legislation in eliminating corruption as well as its enforceability is possible 'to an extent' in the opinion of 21 and 24 respondents respectively. About 11 respondents give enforceability 'a rare chance'. Overall the personal attitude towards corruption is one of resignation and acceptance.

h) Gift-giving: Almost all businesses give gifts to the people with whom they come in contact with on a daily basis be it their own employees, public officials, bank employees, and other service personnel. It is a custom in India during festivals. The cost of gifts varies depending on the position of the receiver. From the survey it emerged that public officials in all cases accept gifts. None of the 41 companies were of the opinion that their gifts were not accepted. The majority of respondents were in favour of gift giving as is seen under:

In favour of gift-giving				
Not at all	Rare occasions	To an extent	A great extent	Always
4	5	22	8	2

i) Impact of corruption on human rights: The most critical component of the survey was to explore whether decision-making managers would consider the possible negative impact of corruption on society, whether they would acknowledge that corruption had the potential to negatively impact human rights and the environment. The answers were critical to the proposed CRDM model whose intention is to provide an orderly way of thinking to protect human rights and sustainable development. All managers were of the opinion (when asked) that corruption has a negative impact on society and has the potential of negative impact on human rights and environment. There was not a single respondent who said otherwise. Therefore, if the premise concerning negative impact of corruption on society, human rights and environment already exists in the minds of decision-making managers, the proposed CRDM model will have a definite role to strengthen that premise and operate in case of decision-making executives who possess an ethical frame of mind.

Summary of Findings:

Most multinational business managers interviewed in the survey rely on company policy whether written or unwritten, but none of them use any decision-making model to assist in such decisions. The personal attitudes of multinational business decision-making managers in India towards corruption are typically that of acceptance and resignation. This could also be due to the continued experiences of corruption and graft in India on a daily basis. Gift-giving is accepted as a part of the Indian culture during festival times and gifts to public officials are accepted by the gift-giver and gift-receiver as normal by over 90% or 37 companies interviewed. Every interviewed manager, without a single exception, agreed that corruption and bribery could negatively impact society, human rights and the environment.

The relevance of the CRDM model in practical decision-making is supported in real-life business situations from this survey because (i) it confirms that rent-seeking behaviour exists (ii) leading to corruption dynamics such as fear of loss of business and a response to it is generated in the minds of decision-making managers from an economic perspective (iii) that results in active corruption when non-payment of a bribe results in loss of business (iv) that implies a change of stance from a position of

passive corruption (demand) to a position of active corruption (offer) (v) company policies do not mention the adverse affect of corruption on stakeholders (vi) nevertheless decision-making managers are aware that corruption can adversely affect stakeholders (this is in response to direct questions addressed about adverse affects of corruption on human rights, environmental issues) (vii) currently no decision-making tools are in use to remind a decision-making executive of stakeholder issues.

The CRDM model therefore can be used as a decision-making tool and as a good practice document in order to ensure that stakeholder issues are protected and fundamental stakeholder issues such as human rights and issues of sustainable development are protected while taking decisions connected with corruption-related situations. Adoption of the CRDM model will help the user company in the following ways (i) avoid active corruption consciously, (ii) within a short time frame establish corruption that affects critical stakeholder issues such as human rights, environmental issues and sustainable development, (iii) reject such situations as explained in (ii) and (iv) prevent stakeholder rejection and negative consequences on the company as well (v) explain and justify facilitating payments in a given context.

External Validity of the findings:

The survey findings are not only relevant in the Indian context but in the wider multinational context as (i) the findings indicate that multinational companies in India are not using any specific decision-making tools and that in turn indicates that they do not use it elsewhere because logically if they used any specific decision-making tools in other parts of the world, they would have adopted it in India too (ii) that there are no decision-making tools being used in corruption-related situations to protect stakeholder issues such as human rights, environmental issues and sustainable development (iii) Rent-seeking behaviour by public officials is not unique to India but there is evidence of its existence in many countries around the world in varying degrees. Furthermore, managers in any part of the world have an incentive to respond to rent seeking behaviour of public officials by shifting towards a more active stance, especially when they infer that their competitors are gaining profitable business by paying bribes. (iv) Finally, the awareness expressed by multinational managers (when queried) about the adverse effect of corruption on stakeholders, is expected to be an universal response and not confined to India alone.

Therefore, the adoption of the CRDM model as a good practice document or as a decision-making tool has universal application and not limited to the business environment of India.

Introduction:

This chapter is a discussion covering the contribution of CRDM to business theory and practice, the influence of business ethics on corporate behaviour, the shifting trends in management thought from a market influenced process to an organisation based approach, and the role of CRDM in an organisation based business theory and practice.

The theory of Corruption related decision-making (CRDM), as proposed in the preceding chapters has universal application in dealing with corruption-related situations in business. It is primarily concerned in dealing with the illegal, the unethical and the illegitimate in the course of business dealings. CRDM is also an input in the contemporary process of re-conceptualising the role of business and the market economy in management theory and practice. Ghoshal & Moran, (2005) recently questioned the wisdom of analysing management theory and practice in terms of a market economy. The authors contend that a more appropriate level of analysis is the organisations and the people who run them, especially the non-economic aspects. CRDM analyses decisions from the perspective of these key drivers of an economy i.e. large multinational companies and its decision-making managers. The concept of CRDM promotes the notion of an internal control mechanism (internal to the manager and the organisation) in recognition of the role that a company and its individual managers could play in reducing corruption in business.

Ghoshal & Moran (2005) contend that adoption of the concept of 'organisational economy' in formulating management theory and practice as opposed to the prevalent market economy concept in management theory and practice shall create value, set standards and contribute to society in a legitimate manner through a corporation's actors i.e. its managers. CRDM, if placed in this context, is an instrument to empower the individual (decision-making) managers within an organisation to set standards and contribute to society in a legitimate manner, while also dealing with illegitimate situations.

Impact of Business Ethics on Business Conduct:

During the past twenty-five to thirty years the business ethics movement has gained momentum and has influenced many aspects of business conduct (Henk Van Luijk, 2000). At the same time the global incidence of corruption in business is on the increase (evident from BPI 2002- appendix- 1) despite international efforts such as the OECD anti-bribery convention, 1999 and other regional efforts. The series of corporate frauds and its magnitude too has been on the rise along with the global incidence of corruption in business, as is evident from many of the fraud induced corporate collapses during 2001 and 2002. That brings us to the question as to whether ‘business ethics’ has had any impact on corporate behaviour.

In overall terms business ethics appears to have had some impact. It started off as a philosophical debate amongst academics and has progressed to a point where it has conceptually entered board room discussions and public declaration of ethical intent on part of large multinational companies (eg. company codes of behaviour, signing of Caux Round Table principles,⁹⁹ Global Sullivan principles,¹⁰⁰ U.N. Global Compact¹⁰¹), corporate performance evaluation criteria (eg: stakeholder relations; triple bottom line reporting) and international codes of conduct for business (eg: OECD anti-bribery Convention, 1999; United Nations Convention against Corruption, 2003, OECD Stakeholder model of Corporate Governance, 2004). As Henk van Luijk (2000:4) writes, “Business ethics has matured to such an extent that it is now able to provide a vocabulary and a set of instruments with which we can not only discuss ethics in business but also work on it effectively.” These instruments or models provide effective course of ethical action by managers who adopt them. Adoption of these instruments by business managers also indicates the amount of progress that the subject of business ethics has made during the past three decades.

Role of Models in Management theory and Practice:

⁹⁹ The Caux Principles are built on the ideals of human dignity and Japanese *kyosei* (common goods are more important than individual, company or national interest). The Caux principles can be accessed at www.cauxroundtable.org

¹⁰⁰ Global Sullivan Principles refers to set of principles signed by 30 global companies to support economic, legal, social, political justice; encourage equal opportunity; train and advance disadvantaged workers; assist greater tolerance amongst people; improve the quality of life for communities and support human rights.

¹⁰¹ This is signed by 50 major global companies agreeing to support free trade unions, abolish child labour, and protect the environment.

Likewise, in management strategy (eg: Porter's five forces model), models in use have a profound influence on managers who adopt them in their business conduct. Many of these models are based on quite narrow theoretical lenses. The whole concept of a market economy and its role in formulating *management* theory has been questioned extensively in the works of scholars (Ghoshal & Moran, 2005; Singer, 2003; Nahapiet & Ghoshal, 1998; Singer, 1994; Simon, 1991). However, once managers adopt a model based on a limited theory, the managerial actions cannot easily overcome those limitations. For instance, Ghoshal & Moran (2005: 15) explain that the message that follows from Michael Porter's model of competitive strategy to practising managers is "to do their jobs, managers must prevent free competition, at the cost of social welfare." The authors have drawn this inference by analysing that Porter's theory talks of building market power i.e. "by developing power over their customers and suppliers, by creating barriers to entry and substitution, and by managing the interactions with their competitors" (Ghoshal & Moran, 2005:15). Logically, as Ghoshal & Moran (2005:15) argue, what follows is "the purpose of strategy is to enhance this value-appropriating power of company, by restricting competition and thereby, sustaining and enhancing profits" and such restraint of free competition is to the detriment of society. This argument leads us to another aspect of restricting competition i.e. use of corrupt means by certain players to develop power over other market players and to sustain that power over other market players. Corruption in such situations is seen as an essential part of the business environment and becomes acceptable business behaviour. All of which acts to the detriment of society, yet all these actions are adopted by managers as part of their desire to pursue competitive strategies.

Ghoshal & Moran (2005: 9) contend that bad theory leads to bad practices in management and also in understanding the role of companies in society. It is only good theory that can lead to good practice and creation of good decision-making models that shall ensure business managers take socially responsible actions. When theories and models (whether for ethical decision-making and/or strategic decision-making) are adopted in teaching and practice, they influence values, attitudes and actions of decision-makers. The outcome of actions based on unquestioned theory and modelling will achieve only what the theory intended to achieve. The situation changes only when we question these existing models and existing management

theories from a social responsibility perspective instead of working incrementally on them.

The evolution of business ethics continues by questioning existing theory and practice and by formulating responses to new challenges, new definitions and situations of corporate fraud and unethical corporate behaviour hitherto unknown (eg. corporate collapses in USA during 2001 and 2002). Corruption in international business is one such challenging area for the subject of business ethics. It appears to be on the rise as indicated by Transparency International's Bribe Payers Index, 2002 and its media releases. But, the issue of corruption in business is often ignored within academic literature (Voyer & Beamish, 2004; Roy & Singer, 2005), especially its role as a means of competition used by players in a market based economy. More generally, the study of the whole phenomenon of "competition" in business as an *ethical* issue has been sidelined (Henk Van Luijk, 2000). All this indicates a significant dearth of scholarly work in the area of corruption in international business, its role in the market based economy and the underlying ethical issues involved in managerial decision-making while dealing with corruption-related situations. Corruption-related decision-making (CRDM) as proposed in this thesis is an attempt to provide managerial decision-making frames of reference (grounded in ethical theory). In doing so, CRDM not only contributes in the evolutionary process of business ethics but also strengthens the shift in management thought towards an organisational economy as opposed to a market economy.

The notion of organisational economy is the recognition that large formal organisations are "the marshalling yards for society's resources" and they are not "small and powerless actors" dominated by the invisible hand of the market (Ghoshal & Moran, 2005:4). Gone are the days of Adam Smith when the market comprised of a large number of small players whose existence depended on market forces. Today, these large formal organisations are the "chief actors for creating wealth and economic progress" (Ghoshal & Moran, 2005:4). Multinational companies are not weak and insignificant players in a global market, but they are dominant organisations whose presence generates economic progress with the capacity to bring about social progress (Prahalad & Hammond, 2002). The potential to bring about social progress lies in the quality of managers at helm of affairs, as much as in their long term ability

to sustain economic progress. The quality of managers can be improved, *inter alia*, by providing them business theory and practice that generates social progress along with economic progress.

Shift in Business theory and practice:

Business theory and practice has been traditionally shaped by the language of competitive strategy fundamentally promoting the notion of outdoing or eliminating the competition. Any business theory that does not appear to meet the language of competitive strategy is viewed with scepticism, as every new theory is expected to pay back manifold in revenue terms, if the theory has to gain acceptance and recognition of any sort. In recent times, the occurrence of serious corporate failures (example: Enron; WorldCom, Parmalat, Adelphi) are posing management research a challenge to find legitimate (for ensuring social legitimacy of corporations) solutions in dealing with the illegal, unethical, the illegitimate, or the more oppressive aspects of business. Perhaps, these corporate failures occurred as a result of the widely adopted language of strategy in action where beating the competition was the *raison d'être* for one's survival and growth in business. It may also be a result of a distorted perception on part of managers that ethical decision-making differs from strategic decision-making and ethical decision-making is not practical in the face of market forces.

Corruption in business is a managerial response originating from a similar mindset dominated by the market economy model and the language of competitive strategy in a manager's analytical frame of reference. As a consequence, many managers appear to be willing to outdo the competition even to the extent of adopting corrupt means in certain situations (as evident from Bribe Payers Index, 2002). The adoption of corrupt means such as bribery to gain business is a part of the pervasive 'market economy' culture influenced by an outdated language of strategy that assumes that our actions have to be determined by market influences, if we have to survive in business. Ghoshal & Moran (2005:9) reject the "marvel of the market" and consider the market framing as a matter of "analytical convenience." The authors contend that companies are stronger than the market, and companies, their managers have a value-creating role in society, which can in turn determine the market. Corruption-related decision-

making rejects the market influences in favour of an internal decision-making mechanism in recognition of the value creating role of companies and their managers.

Ghoshal & Moran (2005:4) believe that economies are made of organisations who create economic prosperity and that in turn is dependent on (i) the quality of management of those organisations and (ii) an alignment of economic and moral dimensions of management. Social legitimacy of business will be preserved only when there is an alignment of both the economic and moral dimensions of business. If they are compartmentalised and treated as distinct entities for managerial decision-making purposes, then the “marvel of the market economy” will not produce economic results always, and will surely fail to secure social legitimacy. Decision-making models in management theory and practice based on the market economy model have had a profound impact till recent times on managerial beliefs, values, attitudes and actions. All this is a part of a wider framework of ideas, that is, the effect of models and language on the users (managers) attitudes, values and practices. Only business theory, practices and models that seek social legitimacy for business will be able to secure social legitimacy for business conduct.

The Social Legitimacy of Business:

As a response to the abovementioned influences of models, theory and language based on market economy, the business ethics movement emerged as a language of societal expectations with the notion of business requiring social legitimacy for doing business. In a new organisation based approach to management (Ghosal & Moran, 2005) as opposed to a market based approach it implies the creation of a corporate conscience (Goodpaster et al, 2004) that responds to society and its expectations. The law cannot entirely meet that aspiration because society’s expectations are not always covered by the law and legal compliance alone will not suffice. The best way to achieve social legitimacy would be to a build corporate conscience and a conscientious response capability within an organisation through a corporation’s own actors (individual managers). This can be done by recognising that each business theory, practice and model of action ought to be shaped around a distinctive set of rationalities that can be linked backward to the core thought process through a process of meta-decision-analysis (Singer, 1994). This in turn emphasises the need to

empower and motivate managers to blend the language of strategy with ethics in order to make ethical intent operational in corruption-related situations.

The need of the hour in business theory and practice is to find ways of reducing and eliminating corruption in global business and our society. The CRDM process is a potential contribution in that direction, because it provides ways to seek and gain social legitimacy for a corporation's actions even under the most difficult business conditions. CRDM is a response at the individual level from and within an organisation to the external rent-seeking business environment, based on a corporation's conscience and desire to maintain social legitimacy and respect for its stakeholders.

Legislation against corruption or any corporate misdemeanour is an external mechanism which may not be the best way to build corporate conscience and conscientious response capability on part of a corporation and its managers. Legislation may indicate what society does not want to be repeated but legislation cannot rule out what has never happened in the past, because there must be a political will to devise and enact the relevant law. Legislation is at its best usually a matter of hindsight and not foresight (example the enactment of Sarbanes Oxley Act in the USA as a consequence of the corporate frauds in USA). Social legitimacy therefore requires conscientious decision-making mechanism that exceeds current legal compliance requirements and respects stakeholder issues. CRDM provides that opportunity to win social legitimacy in an area (corruption in business) where all actors (business managers, society, legislators, nations, international bodies such as UN and OECD) struggle to cope.

CRDM as a response to corruption control and society

Until recently, corruption as a subject was studied under the classification of political or legal studies (eg: Rose-Ackerman, 1978; Noonan, 1984; Klitgaard, 1988; Elliot, 1997 to mention but a few). However, after the OECD Convention came into force in February 1999 and after companies such as Enron collapsed due to corporate frauds, an increased interest emerged in studying corruption and other illegal, illegitimate aspects of business. About 5 or 6 years ago there were very few articles on corruption, corporate crime and the illegitimate aspects of business in mainstream academic

journals. However, after the series of corporate frauds and failures during 2001 and 2002 one notices approximately 25 articles in *Journal of Business Ethics* (as against a few before that) and 6 articles in *Business Ethics Quarterly*. A call for interdisciplinary papers on corruption was made by Academy of Management. A few papers also appeared in *Strategic Management Journal* (eg: Schnatterly, 2003; Robertson & Crittenden, 2003). But none of these papers actually made any attempt to approach the question of corruption in business as a ‘management decision-making’ problem.

CRDM is a response to fill that gap in academic literature and give a start to a process of academic enquiry in the area of management decision-making dealing with corruption. It is a response formulated at the level of an individual actor (manager) and a stakeholder conscious corporation to control corruption for the benefit of society. It is advocated as a part of a stakeholder conscious decision-making process on part of a decision-making manager. The concept of CRDM can help future research address ethical issues in the area of lobbying in particular, which operates on the borderline of legitimate business practices.

Conclusion:

CRDM, its role and purpose is a part of the larger set of approaches to corruption reduction at various levels (individual, business, government). It intends to influence organisational culture of organisations and mindset of organisations and managers as individual actors. The CRDM concept and the CRDM model are designed first and foremost, to protect critical stakeholder rights as response from a corporation which has a conscience and a conscience capability. It can also provide an ex-post justification in those situations when a manager is forced to pay a bribe or take part in a corrupt act with a distinct set of rational arguments. The justification in such situations is intended to provide strength to the corporate and individual conscience as a matter of internal assessment, review and improvement. The concept of CRDM blends the language of strategy with ethics at its core to empower the key actors in a potential new order of things i.e. a move from a flawed market economy to a more expressive, authentic and ultimately honest organisation based economy.

Conclusion

The purpose of this thesis was specifically to assist decision-making managers deal with corruption-related situations ethically through a process of “learning to think” (Buchholz & Rosenthal, 2001:30). The corruption-related decision-making process as proposed in the thesis has a specific purpose: it is to make individual managers think and recognise moral problems, in specific contexts. It is a logical process that imports an ethical dimension to ambiguous areas in corruption-related situations, with a view to achieving either an outright rejection of an action due to its consequences on others, or a justification of one’s decision in a specific context within the framework of corporate social responsibility and moral free space.

In practice, decision-making managers usually perceive the consequences of their decisions in corruption-related situations predominantly from an exchange utility perspective under pressures such as fear of losing business. This coupled with some other factors create dynamics conducive to corruption, which can later turn into greed and associated negatives with it. The whole process of dealing with corruption-related situations in a stakeholder context proposed in this thesis is to disrupt these dynamics of corruption and offer another perspective to a decision-maker.

The cases of Shell and Enron are a testimony to a chosen path of active corruption and its results. The fall of Enron in USA is a classic example in recent times of commercial prudence turning to greed and all the negatives associated with it. It is also a case of how corruption dynamics rule and how every increasing act of corruption makes one greedier still in the process. The law by itself cannot correct human greed but what may stand a chance is an appeal to one’s conscience.

The CRDM Model and the process provide an internal self-restraint mechanism for decision-making managers. The concept of CRDM and the CRDM model are instruments that can deliver good governance in the long-term strategic interest of a decision-making executive, the company and society in a democratic society. Engaging and eliminating corruption is also a process of conscience in terms of honouring basic stakeholders’ rights at the individual managerial level. Democratic

societies cannot function on legal processes alone; to thrive they need commitments from individuals who are part of the society. It is of great significance that every single manager who took part in the survey, when queried, was of the opinion that corruption can adversely affect human rights and sustainable development though their company documents/ policies did not mention this possible impact. Thus, the CRDM model has the potential to be used as a good practice document by companies. The CRDM concept and model contributes to business theory and practice by focusing on the organization, its actors and the notion of corporate conscience capability.

It is understood that it is plainly far beyond the capacity of any one actor to significantly reduce the overall level of corruption in the world. Instead, a multi-faceted approach is needed, involving individual managers, corporations, NGO's and governments. In order to bring about any desirable macro-level outcomes such as reductions in corruption and poverty, or improvements in human rights, it has become increasingly apparent that a multi-faceted approach is necessary; involving coordinated changes on many fronts (Sen, 1999). Although the primary thrust of systemic change remains at the level of governments, NGO's and other institutions, the increased relative power of multinational corporations indicates that commensurate changes in their managers' mental models can also be of tremendous significance.

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Appendix I

Transparency International Bribe Payers Index 2002 (source: www.transparency.org)

In the business sectors with which you are most familiar, please indicate how likely companies from the following countries are to pay or offer bribes to win or retain business in this country [respondent's country of residence]?				
Rank	2002		1999	OECD Convention (as of 14 May 2002)
	Total sample	835	779	
1	Australia	8.5	8.1	Ratified
2	Sweden	8.4	8.3	Ratified
	Switzerland	8.4	7.7	Ratified
4	Austria	8.2	7.8	Ratified
5	Canada	8.1	8.1	Ratified
6	Netherlands	7.8	7.4	Ratified
	Belgium	7.8	6.8	Ratified
8	United Kingdom	6.9	7.2	Ratified
9	Singapore	6.3	5.7	not signed
	Germany	6.3	6.2	Ratified
11	Spain	5.8	5.3	Ratified
12	France	5.5	5.2	Ratified
13	USA	5.3	6.2	Ratified
	Japan	5.3	5.1	Ratified
15	Malaysia	4.3	3.9	not signed
	Hong Kong	4.3	-.*	not signed
17	Italy	4.1	3.7	Ratified
18	South Korea	3.9	3.4	Ratified
19	Taiwan	3.8	3.5	not signed
20	China (People's Republic)	3.5	3.1	not signed
21	Russia	3.2	- **	not signed
	Domestic companies	1.9	- **	

The question related to the propensity of companies from leading exporting countries to pay bribes to senior public officials in the surveyed emerging market countries.

A perfect score, indicating zero perceived propensity to pay bribes, is 10.0, and thus the ranking starts with companies from countries that are seen to have a low propensity for foreign bribe paying. In the 2002 survey, all the data indicated that domestically owned companies in the 15 countries surveyed have a very high propensity to pay bribes - higher than that of foreign firms.

* included as part of China in 1999

** not included in 1999

Appendix- II

The equivalent for the word Bribe in different countries:

Brazil	<i>jeitinho</i>	Malaysia	<i>makan siap</i>
Eqypt	<i>baksheesh</i>	Mexico	<i>mordida</i>
France	<i>pot au vin</i>	Nigeria	<i>dash</i>
Germany	<i>trink gelt</i>	Pakistan	<i>roshvat</i>
Greece	<i>bakssissi</i>	Peru	<i>coima</i>
Honduras	<i>pajada</i>	Phillipines	<i>lagay</i>
Hongkong	<i>hatchien</i>	Soviet Union	<i>vzyatha</i>
Indonesia	<i>wong sogok</i>	Thailand	<i>sin bone</i>
Iran	<i>roshveh</i>	United States	<i>pay off</i>
Italy	<i>bustarella</i>	Zaire	<i>tarif de verre</i>
India	<i>speed money</i>		
Japan	<i>wairo</i>		

(Source: Jacoby, N.H., Nehemkis, P., Eells, R. (1977), page 6, Macmillan Publishing Co. Ltd, N.Y.)

Appendix III

List of current international and regional legislation/ Conventions against corruption in business

Name of Convention	Year initiated	Enforceability Status
United Nations Convention against Corruption (UNCAP)	2003	Not in force as on date
OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD)	1999	In force
African Union Convention on Preventing and Combating Corruption (AU)	2003	Not in force as on date
Council of Europe Criminal Law Convention on Corruption CoE (Crim.)	1998	In force
Council of Europe Civil Law Convention on Corruption CoE (Civil)	1999	In force
Inter-American Convention Against Corruption	1996	In force
Foreign Corrupt Practices Act, 1977	1977	In force ¹⁰²

¹⁰² The FCPA applies to US companies globally and non-US companies operating in the US market.

Appendix-IV

Global norms under Integrative Social Contracts Theory

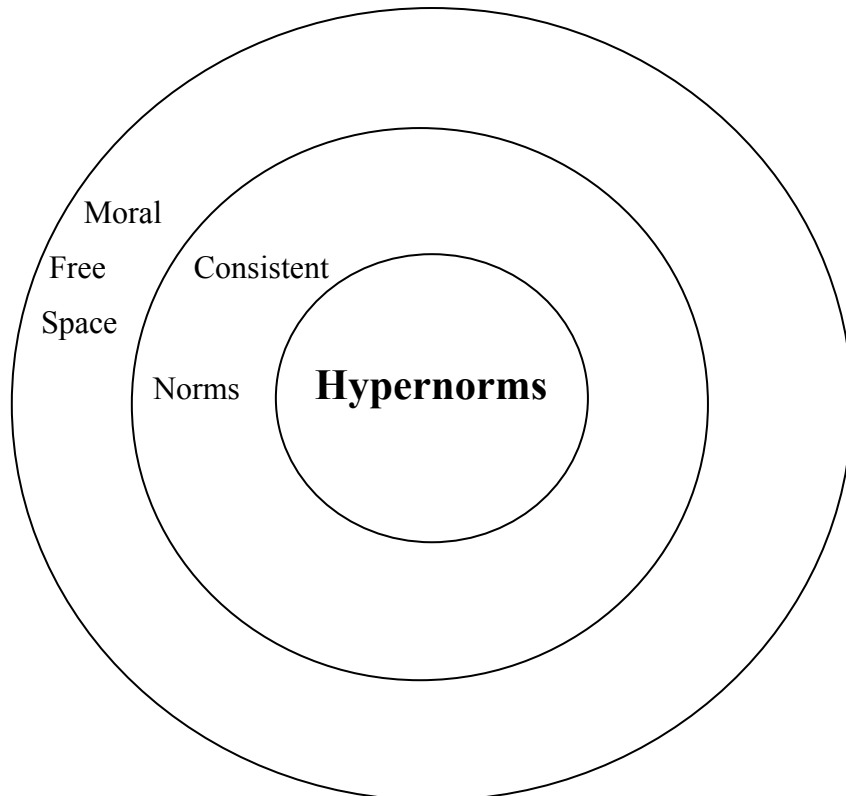
(Source: Donaldson & Dunfee, 1999:222)

Illegitimate Norms:

Incompatible with Hypernorms

Illegitimate Norms:

Incompatible with Hypernorms



Illegitimate Norms:

Incompatible with Hypernorms

Illegitimate Norms:

Incompatible with Hypernorms

Examples of:

Hypernorms: Human Rights as per U.N.'s Universal Declaration of Human Rights.

Consistent Norms: Bribery is considered unethical by a vast majority of people.

Moral Free space: Ritualistic gift-giving to monarchy by businesses in some Middle-eastern countries.

Illegitimate Norms: Detention of any individual without a fair judicial process.

Appendix –V The Survey Questionnaire

1. How often have you been asked for a bribe in your home country while dealing with public officials?

1	2	3	4	5
Never	Rarely	Sometimes	Usually	Extremely frequently

2. How often have you been asked for a bribe in a host country while dealing with public officials?

1	2	3	4	5
Never	Rarely	Sometimes	Usually	Extremely frequently

3: How often when you never paid a bribe, it has resulted in loss of business?

1	2	3	4	5
Never	Rarely	Sometimes	Usually	Extremely frequently

4. Thereafter to what extent has the above experience compelled you to offer a bribe in anticipation?

1	2	3	4	5
Never	Rarely	Sometimes	Usually	Extremely frequently

5. To what extent do you believe that corruption can be eliminated?

1	2	3	4	5
Not at all	A rare chance	To an extent	To a great extent	Totally

6. To what extent do you believe that human beings are by and large not corrupt?

1	2	3	4	5
Not at all	A rare chance	To an extent	A great extent	Totally

7. To what extent can anti-corruption legislation eliminate corruption?

1	2	3	4	5
Not at all	A rare chance	To an extent	A great extent	Totally

8. To what extent can anti-corruption legislation be successfully enforced?

1	2	3	4	5
A rare chance	To an extent	A great extent	Completely	Not at all

9. Does your company policy documents lay down a policy to deal with situations of corruption and bribery? (please tick) Yes/ No

10. Do your company policy documents mention explicitly the negative impacts of corruption and bribery on society? (please tick) Yes/No

11. When faced with a situation of corruption or bribery do you refer to (please tick one or more):

- a) Company policy
- b) Previous experience
- c) Feedback from subordinates
- d) Personal discretion
- e) A strategic decision-making model
- f) Any other, please specify

12. To what extent do you fear that corrupt activities of any competitor will result in loss of business to your company?

1 2 3 4 5
Not at all A rare chance To an extent A great extent Completely

13. To what extent do you believe that your company should give token gifts to public officials that you need to deal with?

1 2 3 4 5
Not at all Rare occasions To an extent A great extent Always

14. Are such gifts accepted? Always/Not always

15. How often have you been forced to pay because it was a situation where either your company property or human life was in danger?

1 2 3 4 5
Never Rarely Sometimes Usually Extremely frequently

16. How often have you made a facilitating payment (payments of small sums of money) to lower level staff especially at clerical, administrative or security staff simply to avoid harassment and time delays?

1 2 3 4 5
Never Rarely Sometimes Usually Extremely frequently

17. How often have you been forced to pay organised crime, extortionist or protection racketeers?

1 2 3 4 5
Never Rarely Sometimes Usually Extremely frequently

18. Do you believe that corruption has a negative impact on society?
Yes/No

19. Do you believe that corruption and bribery can have a negative impact on the environment?
Yes/No

20. Do you believe that corruption and bribery can result in human rights abuses?
Yes/No

**Appendix –VI Results of the Survey conducted in India during
April 2002, June 2002, September 2003, February- March/April 2004**

A. Frequency of Active vs. Passive corruption (from a MNC manager’s perspective who is operating in India- the host country)

1. (Question asked: How often have you been asked for a bribe in your home country while dealing with public officials?)

N= 41

Never	38
Rarely	2
Sometimes	1
Usually	NIL
Extremely frequently	NIL

2. (Question asked: How often have you been asked for a bribe in a host country while doing business while dealing with public officials?)

N= 41

Never	1
Rarely	3
Sometimes	21
Usually	13
Extremely frequently	3

B. Impact of not subscribing to bribery (when MNC manager does not offer or pay a bribe and loses business as a result and later from this negative experience subscribes to active bribery as a matter of economic rationality)

1. (Question asked: How often when you never paid a bribe, it has resulted in loss of business?)

N= 41

Never	3
Rarely	3
Sometimes	9
Usually	26
Extremely frequently	NIL

2. (Question asked: Thereafter to what extent has the above experience compelled you to offer a bribe in anticipation?)

N= 41

Never	6
Rarely	8
Sometimes	14
Usually	12
Extremely frequently	1

C. Personal Beliefs of MNC managers being interviewed.

1. (Question asked: To what extent do you believe that corruption can be eliminated?)

N= 41

Not at all	12
A rare chance	15
To an extent	11
To a great extent	3
Totally	NIL

2. (Question asked: To what extent do you believe that human beings are by and large not corrupt?)

N= 41

Not at all	NIL
A rare chance	4

To an extent	25
To a great extent	11
Totally	1

3. (Question asked: To what extent can anti-corruption legislation eliminate corruption?)

N= 41

Not at all	NIL
A rare chance	11
To an extent	21
To a great extent	8
Totally	1

4. (Question asked: To what extent can anti-corruption legislation be successfully enforced?)

N= 41

Not at all	NIL
A rare chance	9
+To an extent	24
To a great extent	8
Completely	NIL

5 a) Do you believe that corruption has a negative impact on society?

b) Do you believe that corruption and bribery can have a negative impact on the environment?

c) Do you believe that corruption and bribery can result in human rights abuses?

N = 41

	YES	NO
Corruption has a negative impact on society	41	NIL
Corruption and Bribery can have a negative impact on society	41	NIL
Corruption and Bribery can result in human rights abuses	41	NIL

D. Company Policy

1. (Question asked: Does your company policy documents lay down a policy to deal with situations of corruption and bribery?)

N= 41

	YES	NO
Company policy laid down to deal with situations of corruption and bribery	33	8

2. (Question asked: Does your company policy documents mention explicitly the negative impacts of corruption and bribery on society?)

N = 41

	YES	NO	No Comments
Company policy documents explicitly mention the negative impact on society	3	37	1

E. Gift giving practices:

1. (Question asked: To what extent do you believe that your company should give token gifts to public officials that you need to deal with?)

N= 41

Not at all	4
Rare occasions	5
To an extent	22
To a great extent	8
Always	2

2. (Questions asked: Are such gifts accepted?)

All 41 managers confirmed that whatever company token gifts are made during festive occasions are accepted by public officials.

F. Fear of loss of business (competitor's bribery)

1. (Question: To what extent do you fear that corrupt activities of any competitor will result in loss of business to your company?)

N= 41

Not at all	2
A rare chance	3
To an extent	23
To a great extent	13
Completely	NIL

G. Decision-making process

1. (Question asked: When faced with a situation of corruption or bribery do you refer to a) company policy b) previous experience c) Feedback from subordinates d) Personal discretion e) strategic decision-making model f) any other, please specify)

N= 41

	Company Policy	Previous Exp	Feedback	Personal discretion	Decision-making model	Any other, pl specify
Responses	35	8	1	8	NIL	1(verbal company policy)

- 2 a) How often have you been forced to pay because it was a situation where either your company property or human life was in danger? (keyword: Extortion- life/property)
- b) How often have you made a facilitating payment (payments of small sums of money) to lower level staff (public office) especially at clerical, administrative or security staff simply to avoid harassment and time delays? (Keyword: facilitating payment)
- c) How often have you been forced to pay organised crime, extortionist or protection racketeers?
(Key word: Organised crime)

N= 41

	Never	Rarely	Sometimes	Usually	Extremely frequently
Extortion- Life/property	35	6	NIL	NIL	NIL
Facilitating payment	2	3	12	19	5
Organised Crime	34	5	2	NIL	NIL