“READ FOR YOU” COLLECTION
No. 60 – October 2026

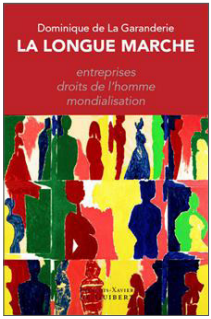
The Long March

Summary of the book
by Dominique de La Garanderie

leDoTank
in partnership with Nexia S&A

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ENS Paris-Saclay, based on:



Dominique de La Garanderie – *La longue marche* (The Long March) – Éditions François-Xavier de Guibert – 2008

Dominique de La Garanderie practised as a lawyer and, in particular, served as the first woman President (bâtonnière) of the Paris Bar from 1998 to 2000. She was also a member of the French National Consultative Commission on Human Rights from 1999 to 2005. She specialises in employment law, CSR and corporate governance.

The "Read for You" collection

The "Read for You" collection offers summaries of landmark academic works on issues related to Corporate Social, Societal and Environmental Responsibility (CSR).
Each theme is meant to be addressed by authors holding contrasting views.
These summaries do not express an opinion of the DoTank, which accepts no responsibility for the views expressed: their sole aim is to provide readers with resources for reflection and to make them want to explore the books and their authors further.

The Long March

Foreword

The Long March, an essay published in 2008, traces the gradual progress of human rights up to the point where they became part of companies' concerns. Born in foundational texts, in particular the Universal Declaration of Human Rights, they are becoming an essential component of corporate social responsibility. As they spread worldwide under the watchful eye of NGOs, trade unions and the courts, these rights are increasingly hard to ignore without damaging a company's image.

Introduction

Respect for human rights and fundamental freedoms, promoted at the highest level by the United Nations Charter, lies at the heart of public law.

Yet promoting it is not the preserve of institutions alone: the private sector has increasingly been urged to play its part, corporate social responsibility (CSR) being understood as a company's commitment to take action in the general interest, beyond its immediate economic horizon. In 2003, the United Nations thus defined norms on human rights responsibilities, with the aim of having them endorsed by companies.

In this context, the production of law by companies themselves took on remarkable proportions in the 2000s, notably through the emergence of a customary business law rich in general principles of governance and social responsibility.

Building on this body of law, companies are able to spread good practices and values throughout society, notably to their suppliers. In 2000, Carrefour adopted a supplier charter incorporating six obligations found both in the Universal Declaration of Human Rights and in the principles of the International Labour Organization (decent wages, prohibition of child labour and forced labour, etc.). However imperfect (remedies are hard to access when rights are violated) and however sceptically received (is it not just one more marketing tool?), the impact of these initiatives on suppliers is nonetheless real: Carrefour, for example, was led to end its business relations with Burma.

Ultimately, the imperfections of CSR and the doubts surrounding its relevance lead us to ask why a company, whose primary function is to create value, should concern itself with human rights. Do these rights really need companies in order to thrive?

1.
From the Universal Declaration of Human Rights to social responsibility

In a sense, CSR is already present in embryo in the Universal Declaration of Human Rights, several of whose articles echo economic issues. Article 1, by stating that "all human beings are born free and equal in dignity and rights", enshrines the principle of non-discrimination; Article 4, the prohibition of forced labour ("No one shall be held in slavery or servitude"); Article 23, the existence of fundamental rights at work (protection against unemployment, free choice of employment, etc.).

Indirectly, these principles have made their way into companies, in particular through the charters and codes of conduct that almost all large French companies now have.

It is not self-evident, however, that companies should take responsibility for upholding human rights, given their primary mission. At least three reasons help explain this stance.
First, and especially since the crisis of the 1970s, companies seem increasingly bound to take into account society's search for a moral horizon. The economic tensions of that period coincided with a weakening of the company's structuring role in society: unlike in the Fordist model, the firm is increasingly seen as potentially harmful to social cohesion, as lay-offs turn workers into adjustment variables. In this context, reflection on business ethics and the social purpose of the company found fertile ground, helping to make CSR a strategy for winning back public opinion.

Second, companies are in daily contact with individuals, as consumers and as workers, unlike the State, which is more distant and less personified. CSR principles are therefore especially well embodied through companies, which may seem counter-intuitive given that, in international law, responsibility

for implementing human rights traditionally lies with States. Yet, as UN resolution 2005/69 confirms, CSR sees companies developing a kind of "sphere of influence", much like States in geopolitics.

Finally, companies may also turn compliance with CSR into a competitive advantage over rivals that would rather do without it. Companies would then increasingly have to comply with a customary business law in order to gain a foothold and compete in the globalised market. Among the possible drivers of CSR, the sanction imposed by the market when CSR obligations are breached appears to be the strongest. Reputational risk is particularly significant, with investors and consumers alike, as the Erika trial against Total shows. This is why GAP pre-emptively broke with its subcontractor in El Salvador in 1996, after Human Rights Watch revealed mistreatment and appalling working conditions. Conversely, the further a market is from consumers' scrutiny, the less pressure it will feel to meet CSR requirements. Added to this obstacle is the potentially heavy cost of converting production facilities to honour such commitments.

2. - 3.
Corporate social responsibility put to the test: from communication to reporting & Responsibility or commitment

Historically, several schools of thought have shaped how CSR is understood.
The first – *business ethics* – is philanthropic: CSR is meant to offset the negative externalities associated with production.
The second – *business and society* – is even more firmly rooted in society: it is because the company, seen as an institution, emanates from society that it must serve the common interest. Indeed, it can only be conceived as interdependent with other social institutions.
The third, dominant today, is *social issue management*: it holds that a company benefits, in its business, from the social and environmental balances it manages to maintain around it. CSR can therefore be partly likened to risk management.

Be that as it may, once companies have adopted CSR principles, these must be communicated, both under the force of law and through companies' own initiative. On the one hand, the NRE law (New Economic Regulations) of 15 May 2001 requires listed companies to publish an annual report on their environmental and social impact. This legal provision does not, however, make CSR identical to legal liability, since the company (at least partly) chooses the former rather than having it imposed, although every commitment does create some form of responsibility. On the other hand, companies tend to entrust CSR governance to a dedicated person – the ethics officer (*compliance officer*) – rather than delegating it to the communications or marketing department.

This communication effort is all the more meaningful in France because CSR raises doubts there, as did other concepts before it – such as sustainable development, truly legitimised by the Brundtland Report in 1987. France stands out for the relatively alien status of the company in people's eyes: unlike in Japan or the United States, they associate it above all with the figure of the boss.

4. - 5.
Corporate social responsibility in action: which actors, which tools? & CSR and human rights: the positive side of globalisation

CSR is making structural progress, well beyond Europe alone. This progress is clearest in China, where it is promoted by the State. It is all the more remarkable there given the need to move from a planned economy to macro-regulation based on making the market and companies more ethical. Footwear manufacturer Yue Yuen thus introduced its own code of conduct, before the Central Committee of the Chinese Communist Party published a roadmap entitled "Building a Harmonious Society" in 2004, aimed at local leaders and the government. Between 2006 and 2008, a body of legislation followed, featuring for example the obligation, introduced in May 2008, to measure the environmental impact of economic activity.

For many companies, the trigger for awareness of CSR issues was the *Global Compact* launched by UN Secretary-General Kofi Annan in 2000. Under the Global Compact, the market cannot function on its own: it must go hand in hand with the affirmation of universal ideals, in order *ultimately* to reconcile economic performance, meeting the needs of the poorest and anticipating the expectations of future generations.
For some, the ideas contained in the Global Compact would be taken further, starting at the UN. In 2004, 11 States signed the United Nations Convention against Corruption. That same year, the UN Commission on Human Rights asked the High Commissioner for Human Rights to produce a report setting out options for strengthening corporate responsibility in the field of human rights. These ideas were not taken up only at UN level, however: the European Commission,

as early as 2001, published a green paper entitled “Promoting a European framework for corporate social responsibility”. Without making them mandatory, it stressed the need for tools to measure CSR, and for reports confirming that the set objectives have been met. Finally, CSR also found anchor points at national level, for example with the NRE law in France.
Alongside these texts, dedicated standards were quickly developed by private bodies, such as SA 8000 on working conditions, forced labour and the prohibition of child labour, or ISO 26000, which relates more specifically to CSR.

This growing awareness of CSR issues takes place under the eye of very specific actors.
NGOs come first: in the past they acted mainly as whistleblowers on the abuses linked to the expansion of multinationals and the growing number of subcontractors. Today, above all, they are partners of companies.

Trade unions also play a central role, especially in promoting international framework agreements on fundamental rights concluded with multinationals. The first was signed with Danone in 1998, followed by other companies such as France Telecom, whose framework agreement required compliance with the core labour standards of the International Labour Organization. Compared with codes and charters, these framework agreements enjoy greater legitimacy, offset by the burden of implementing them. Above all, they were by no means a given, as some unions tended to see CSR as their exclusive preserve. In practice, rather than sweeping unions aside, framework agreements have simply enriched their role in the company, which traditionally focused on health and safety at work.
Compared with framework agreements, it might be tempting to see charters and codes as purely declaratory. That would be a mistake. Increasingly, they tend to be regarded as contractual once they publicly express a commitment and set out the rules for keeping it. Under French law, the employer is thus liable

to the employee if the charter's commitments are not honoured (Article 1147 of the Civil Code). The same applies in common law (*breach of contract*), perhaps even more so given the paramount value placed there on the notion of commitment.

Lastly, the courts play an essential role in making CSR effective, for example in the fight against discrimination. Yet it is less legal action than monitoring, whether internal or external, that proves most effective in ensuring compliance with CSR requirements. While NGOs remain essential for external monitoring, internal monitoring is carried out by many actors, in particular ethics officers (present in most large American companies), provided they are hierarchically independent, and managers themselves, who are increasingly trained in ethics. Managers' credibility is also essential in encouraging workers to speak up when CSR standards are breached: whistleblowers are all the more willing to act if they hope their voices will be heard, at least in part.

Conclusion
What future?

The popularity of CSR makes it tempting to identify, like a recipe, a model of a successful corporate CSR approach. A few structuring elements can be identified.
The first is the existence of a rule, generally laid down in a charter or code.
The second is the embodiment of this rule, both through manager training and through informing workers that the rule exists.
The third is a system of peer partnerships, which makes it possible to share experience and, from one company to the next, to improve the methods used to comply with CSR standards.
The fourth and most important involves carrying out audits, subject to independence and accountability to shareholders.

With these principles in mind, one can measure the "long march" undertaken by human rights: universal – in theory – at the outset, they have become global in practice. Their globalisation also goes hand in hand with a growing form of extraterritoriality: after the Enron scandal in 2001, the Sarbanes-Oxley Act passed in the United States in 2002 required companies to set up an internal control structure, a control that also applies to foreign subsidiaries.
This "long march" also means that companies, riding this wave of globalisation, have supported States in defending the general interest.
Ultimately, this process gives rise to the company's "corporate citizenship": a citizen in the moral sense, but also in the political sense, owing to its active role in the life of the community.

About

LeDoTank

LeDoTank is a non-profit association whose mission is to help bridge the gap in knowledge and understanding of what mid-sized companies are – a gap that affects every field: governance, CSR, financing, social performance, *etc*. LeDoTank is part of the mid-sized company ecosystem, launching projects that bring together entrepreneurs, experts and researchers to better identify their specific challenges and highlight their uniqueness in order to propose tailored solutions. The aim is to help renew their practices and to inform decision-makers about the rules of the game regarding the specific features of these companies.
To make progress along these different paths, leDoTank can rely on its partners: companies or organisations devoting resources – financial and/or human – to finding concrete answers to the societal issues affecting their markets or their immediate environment, but also, more broadly, the common good.

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Nexia S&A

Nexia S&A is a group of 500 professionals, including 48 partners, specialising in audit, accounting and advisory services for finance departments.
The group and its teams provide their clients – SMEs, mid-sized companies and large groups – with value-creating solutions in accounting, finance and ESG, and support them in implementing these solutions.
Nexia S&A cultivates its values of team spirit, trust and expertise, and bases its independence on full control of its capital by its partners and employees.
The group pursues a strategy of controlled growth based on the on-the-ground presence of its partners and managers, an evolving range of services, widespread digitalisation, an international dimension and the development of CSR both internally and for its clients.
Nexia S&A expresses its corporate social responsibility through its governance and management practices, and is delighted to support leDoTank in its mission.

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