RECEPTION OF THE INTERNATIONAL TREATIES INTO THE SPANISH LAW

RECEPTION
The reception of the treaties is regulated in section 96.1 SC and in article 1.5 CC; the formal requisite is their publication in the Gazette in order to become part of the Spanish domestic law. This formal requisite should not be confused with the adoption of an internal norm, so that it could become an international norm in the domestic law. Until their publication in the Gazette they may not be applied by judges or courts.

1st solution: the reservation allows Spain to ratify a treaty, excluding those articles in which it is not interested.

2nd solution: if the reservation is prohibited in the treaty, primary control of constitutionality should be carried out. It is allowed in cases where there would be doubts of Spain's intentions to express consent; the Government or any of the Houses may raise the question of the treaty's unconstitutionality before the Constitutional Court.

HIERARCHY
In the Spanish Law the SC does not declare specifically the primacy of the international law, but asserts it indirectly and unequivocally in the section 96.1 SC. The norms contrary to an international treaty will refrain from be applying because of the primacy of the treaties in relation to the domestic law. Control of constitutionality: solutions in the event of any conflict; reservations, primary control of constitutionality and post- control of constitutionality.

APPLICATION
The conventional norms are binding on Spain since their entry into force at international level, which would be the date to be agreed by the concluded parties of the treaty, however they may not be applied until their publication in the Gazette. When the international treaty is integrated into the Spanish Law, it preserves its international law character and its special legal effectiveness and, moreover, it has primacy over the domestic law.

3rd solution: if the treaty has been ratified and is part of the Spanish State, post- control of constitutionality should be carried out, lodging an complaint of unconstitutionality before the Constitutional Court.