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# Domestic Contestation and Presidential Prerogative in Colombian Foreign Policy

TOM LONG

*University of Warwick*

SEBASTIÁN BITAR

*Universidad de los Andes*

GABRIEL JIMÉNEZ-PEÑA

*Pontificia Universidad Javeriana*

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The study of Colombian foreign policy emphasises external constraints and presidential prerogative in foreign policymaking. Drawing on insights from recent foreign policy analysis literature and evidence from several cases (Plan Colombia, US military bases, free trade talks with China, and ICJ arbitration of a maritime border with Nicaragua), this article challenges commonplace presidentialist assumptions. A novel model of ‘contested presidentialism’ better captures how Colombian domestic actors mobilise to raise political costs to block or modify presidential preferences. When the opposition fails to raise costs, presidentialist assumptions apply. Otherwise, presidents respond strategically by abandoning policies or substituting second-best alternatives.

Keywords: Colombia, domestic politics, foreign policy, institutions, presidentialism, veto players.

The conventional wisdom on Colombian foreign policymaking, and Latin American foreign policy analysis (LAFPA) more broadly, emphasises external constraints and, within those constraints, presidential discretion *vis-à-vis* domestic actors. In its strong form, the ‘presidentialist paradigm’ suggests that, in the absence of international opposition, presidents insulate foreign policy decision-making from domestic opposition to advance their priorities. Domestic opposition might exist, but rarely alters or rejects presidential foreign policy preferences. Presidentialist assumptions remain prevalent in LAFPA, even as the literature on domestic politics increasingly recognises constraints on presidents. In a recent survey of the LAFPA literature, Malamud (2015) suggests: ‘The prominent role that Latin American presidents have played in crafting and implementing foreign policy is well established’. Lopes et al. (2016) describe ‘foreign policies with little or no social articulation’ as predominant in Latin America. Regarding Colombia, Amaya

(2017) concludes that the presidentialist paradigm functions as a ‘commonplace truth’, obscuring dynamics outside the president’s office.

Are domestic actors so marginal? Or do presidentialist assumptions obscure real influence? Adapting advances in foreign policy analysis (FPA) by Milner and Tingley (2015), this article offers a model of how domestic actors impose costs and use institutional and political veto points to shape foreign policy (Tsebelis 2002). Depending on the level of costs imposed by domestic actors, Colombian presidents abandon, modify, or substitute their preferred policy. The opposition’s ability to mobilise costs varies depending on political and institutional context, as well as the type of foreign policy issue. Issues implicating territorial sovereignty might have broader political salience while those with distributional effects spark interest group responses. Colombian foreign policymaking is not as insulated from domestic pressures as formal institutional design, and much analysis, suggests. The model of ‘contested presidentialism’ offered here foregrounds domestic contestation and strategic presidential responses.

The article reviews the literature on Colombian foreign policy analysis (CFPA), situated within LAFPA, then proceeds to construct a model that systematically integrates domestic actors and processes. Next it explains research design and methods and examines four cases of Colombian foreign policy: President Álvaro Uribe’s plan for US bases, Colombia’s response to an adverse International Court of Justice (ICJ) ruling, a Colombia–China free trade proposal, and the initiation of Plan Colombia. The article considers those cases in the light of alternative explanations of international constraints, strong presidentialism, bureaucratic contestation, and coalitional politics. The conclusions offer lessons learned and suggestions for future research.

## Presidentialism and Colombian Foreign Policy

The literature on Colombian foreign policy emphasises international constraints and presidential prerogative in navigating them. Despite this study’s largely state-level focus, a word on international constraints is needed. Regardless of theoretical approach, CFPA emphasises the United States’ centrality to Colombian international relations: Colombia adapts to US interests and seeks returns from a ‘special’, even if asymmetrical, relationship with Washington (Bernal and Tickner, 2017). Histories of Colombian foreign policy emphasise presidential prerogative in managing the country’s relationship with the United States, starting with President Marco Fidel Suárez’s (1918–1921) doctrine of *respice polum*, or looking north (Drekonja Kornat, 1982; Pardo and Tokatlian, 1988). Although some presidents tried to rebalance Colombia’s international insertion, in practice the relationship with the United States remained pivotal (Borda and Tickner, 2011; Amaya, 2017; Tickner and Bitar, 2017). Recently, unflinching alignment characterised Uribe’s presidency (2002–2010), while Santos (2010–2018) attempted moderate diversification. This emphasis on the United States and international systemic constraints is consistent with broader LAFPA (Mora and Hey, 2003; Bertucci, 2013; Neto and Malamud, 2015), even as scholars increasingly stress Latin American agency (Tickner, 2007; Long, 2015: 194–211).

Both theoretical influences and institutional design encourage a greater focus on presidential prerogative in the study of foreign policy than domestic politics. The presidentialist approach has a long lineage in FPA – it resembles the first model in the classic ‘essence of decision’, in which the unitary executive responds rationally to the

international system (Allison, 1971). It is compatible with realism, which has played a predominant role in the study of IR and foreign policy in Latin America (Tickner, 2003). Presidentialist explanations are reinforced by classic studies of Latin American institutional design as strong presidentialist systems (Shugart and Mainwaring, 1997), where presidents used constitutional powers to avoid bargaining with Congress (Shugart and Carey, 1992). These powers have eroded somewhat since the late 1990s (Pérez-Liñán, 2005; Negretto, 2009), and recent comparative politics work highlights a greater diversity of actors in domestic politics (e.g. Mainwaring and Pérez-Liñán, 2014). In foreign affairs, however, presidents retain broad *de jure* constitutional powers: ‘compared with other democracies Latin American presidents have exceptionally wide-ranging competences in this (and other) policy areas’ (Jenne et al., 2017: 5). Due to this, Gardini and Lambert (2011:6) argue, ‘[t]he stature and quality of leaders and their worldviews and beliefs have a strong impact on foreign policy’ in presidentialist Latin American politics. Colombia is an extreme case of presidentialist foreign policy institutions: formally, the president directs foreign policy via the foreign minister, with limited input from a nonbinding, closed advisory commission that operates under presidential discretion.

Given this background, academic and popular accounts treat Colombian foreign policy as a distinctive, insulated sphere where government-opposition quarrels have little relevance. A recent FPA study of Plan Colombia’s initiation, also explored below, argues that the policy emerged from groupthink and that Colombia’s foreign policy structures disallowed ‘debates or controversy’ (Monroy and Sánchez, 2017: 250). Outside Latin America, however, the FPA literature now grants greater attention to two-level politics, legislative constraints, and pressures from interest groups (Evans et al., 1993; Milner, 1997; Milner and Tingley, 2015). In LAFPA, conversely, there are few studies of inter-branch relations and those that exist underscore the weakness of domestic constraints (De Lima and Santos, 2001; Gardini, 2010). Ribeiro and Pinheiro (2016: 489) argue that foreign policy serves as ‘a vehicle for political parties to establish their ideological positions’ rather than to exercise a legislative veto on policy. Nor is there substantial, systematic attention to non-legislative, domestic limitations. Executive bureaucracies have received little attention in the study of Latin American politics, note Polga-Hecimovich and Trelles (2016), though they do not separately address foreign affairs. Brazil’s influential foreign ministry, Itamaraty, was a partial exception (De Faria et al., 2013), but recent scholarship on Brazil also increasingly focuses on overriding presidentialism (Cason and Power, 2009; Fenwick et al., 2017).

Two recent studies make important strides in including domestic factors in explaining Latin American foreign policy, regarding interstate rivalries. Darnton (2014) argues that bureaucratic interests, particularly militaries, acted as ‘spoilers’ for presidents’ peace-making initiatives. By circumventing the president, they undermine presidential discretion to protect their own budgets and missions. For Darnton, the most important costs are intra-governmental. For Schenoni (2018), presidents faced shifting domestic social coalitions in responding to international factors, in his case, rapprochement between Argentina and Brazil. When the pro-rivalry coalition disintegrates, a president is less constrained domestically and so responds to cost signals from the international system. While presidentialism tends to overlook costs imposed by domestic actors, bureaucratic explanations emphasise costs imposed by intra-governmental disputes. Coalitional explanations go beyond the executive and illustrate how presidents assemble political support for their preferences.

## Toward a Model of Contested Presidentialism

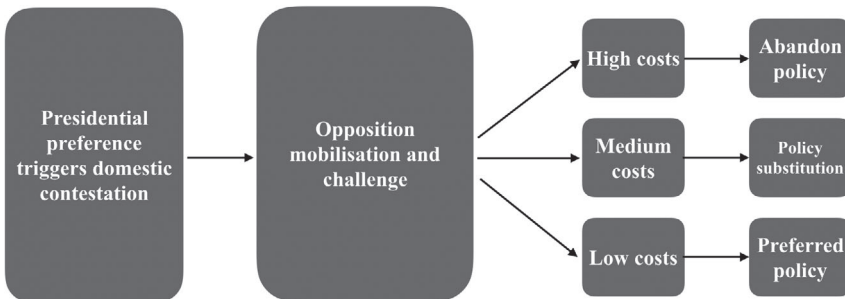
Presidentialism is not an unreasonable starting point for understanding Colombian foreign policy. Presidents often have advanced their initial preferences through insulation of the policy process or co-optation of opposition. Such dynamics characterised the Colombian bombing of a Fuerzas Armadas Revolucionarias de Colombia (FARC, Revolutionary Armed Forces of Colombia) camp in Ecuador in 2008 (Marcella, 2008), the inclusion of international actors in the Colombian peace process (Borda and Gómez, 2015), and the negotiation of the US–Colombia Trade Promotion Agreement (Silva 2007). However, in other cases, presidents have struggled to advance their policy preferences. How can one better understand cases where presidentialist expectations are not met?

Adapting to the Colombian context the research of Milner and Tingley (2015) on US foreign policy and work on veto players (Tsebelis, 2002), the contested presidentialist model highlights mechanisms for domestic opposition and illustrates how opponents impose costs on presidents that might lead to rejection of their preferences. As in Milner and Tingley, actors oppose foreign policy decisions that provoke distributional concerns or touch latent ideological issues, especially when they can be strategically utilised by the opposition. However, differences in institutional arrangements and historical patterns are crucial. In Colombia, questions of electoral cycles, salience, and timing are particularly important for establishing political and institutional veto points, as are the roles of opposition parties, Congress, and the courts.

The stylised four-step model below (Figure 1) diverges from traditional presidentialist assumptions about who is relevant to foreign policy. As in the presidentialist approach, the president first expresses a foreign policy preference that integrates personal goals with consideration of international-level constraints and opportunities. Presidential preference formation is treated as exogenous, permitting greater focus on overlooked domestic interactions. Because establishing ‘true’ intentions is perhaps unattainable, this article takes a pragmatic decision to focus on empirically observable declared or demonstrated preferences. Difficult-to-observe anticipated reactions may in fact lead analysts to understate the influence of domestic political actors on presidential foreign policy (Lindsay, 1992).

The second step concerns the mobilisation of domestic opposition. As Milner and Tingley argue, certain issues are more likely to trigger contestation, such as when the

Figure 1. ‘Contested Presidentialism’ in Foreign Policy



Source: Authors’ elaboration.

opposition successfully politicises ideological divisions or when policies have distributional consequences for powerful interests. As the political economy literature indicates, interest groups are shaped by ‘distributional consequences of international agreements’ (Milner, 1997:61), and they pressurise decision-makers to safeguard their positions. Conversely, ideology can be understood as ‘beliefs about dispositions of foreign actors and the appropriate way to deploy government resources to deal with them’ (Milner and Tingley, 2015:58). When particular foreign policies have an ideological coherence that conflicts with the dispositions of other salient political actors, a determined opposition can mobilise those divisions.

If the preferred policy triggers domestic contestation along distributional and/or ideological lines, opposition actors will seek to block or shape the policy by imposing political costs through formal or informal veto processes. Formal vetoes include denying ratification of necessary legislation or challenges in domestic courts. Informal vetoes include heightening electoral risks or undermining legislative support for the government’s broader agenda, perhaps through defecting from legislative coalitions. The formal institutional context matters, in addition to lobbying and power politics; for example, independent courts may give less powerful actors access to a veto capacity they would otherwise lack.

Whether the opposition can block or reshape presidential preferences depends on the opposition’s ability to access electoral, legislative, or judicial veto points and impose political costs. In the face of higher political costs, a president would have to bear costs to continue with a policy, or modify or abandon the policy to eschew costs. High costs are understood as a threat to the president’s position or continuation in power; medium costs create challenges to the president’s agenda without threatening his or her position; low costs include friction but no clear political threat. Different levels of political costs will provoke different outcomes. When faced with high costs, a president may abandon the policy. More often, when facing medium costs, presidents will seek to advance the goal through other, less preferred means. Instead of accepting defeat, presidents will attempt to substitute policies that minimise divisions or avoid vetoes (Starr, 2000; Milner and Tingley, 2015).

## **Research Design and Methods**

To explore the limitations of the presidentialist logic in Colombia, this article now examines four salient cases of foreign policy decision-making in which domestic opposition emerged. In three, significant modifications of the initial preferred policy occurred, while in the fourth presidential preferences advanced despite opposition. Intentionally, the outcomes of the cases vary, with *prima facie* divergence from the expectations of presidentialist LAFPA in three cases. As Bennett and Elman (2006: 462) note, ‘such deviant cases may also yield information about previously unidentified causal mechanisms that may also operate in other cases’. Selecting cases on outcome is a widely accepted design to challenge deterministic theory, explore common mechanisms, and propose theoretical insights that could guide the exploration of other cases (George and Bennett, 2005: 20–28; Seawright and Gerring, 2008: 303). The three cases of presidential preference modification allow exploration of processes of domestic opposition; the case of presidential success demonstrates the absence of mechanisms through which opposition succeeded elsewhere. There is an important limitation to this research design, however. Because this is not a representative sample of Colombian foreign policy decisions, no

generalisable predictions of presidential success and failure more broadly can be made. However, one can highlight common processes of opposition and examine presidential responses to challenge rigid assumptions about presidential prerogative in CFPAs.

The case narratives build on secondary literature, press, and documents, as well as fieldwork conducted by the authors. The four brief accounts contextualise the policy, identify presidential preferences, and then describe the process of opposition and presidential responses to the opposition. The cases' outcome is then compared to the expectations of the presidentialist model.

## Case Studies

Why have Colombian presidents sometimes retreated to alternative policies in key cases of Colombian foreign policy decisions during the last two decades? The cases below suggest an important role for domestic factors that are poorly incorporated into presidentialist explanations. After exploring the cases, we consider why Darnton's (2014) and Schenoni's (2018) arguments are not sufficient to explain all the cases.

### *Case 1: Plan Colombia*

Presidentialist assumptions remain engrained in part because they reflect the outcomes of many significant cases. As a contrast to the effective domestic opposition in the later cases, we first examine a case that unfolds largely as the presidentialist argument implies. In the creation of Plan Colombia, a Colombian president drew on US support to achieve his policy goals in the face of unsuccessful domestic opposition (Avilés, 2008).

In the late 1990s, President Andrés Pastrana took a major step in internationalising the Colombian conflict through a dramatic expansion of existing cooperation with the United States (Tickner, 2007; Borda and Tickner, 2011). Pastrana's policy preferences, enunciated in 1998–1999, focused on using external resources to strengthen the Colombian state in military and institutional terms. This occurred in the context of demonstrable military weakness and largely stillborn peace negotiations with the FARC. Plan Colombia represented a quantitative and qualitative increase in cooperation with the United States, namely boosting resources directed to the security sector, although civilian and human rights programmes also saw more funding. Qualitatively, Plan Colombia produced a gradual shift from the focus on transnational drug trafficking to the internal Colombian conflict (Long, 2015: 212–216). Pastrana also sought US support for peace negotiations with the FARC; direct participation was paused after leaks about secret meetings between State Department officials and FARC representatives and definitively ended after FARC members killed three US missionaries. However, the Clinton administration continued to tolerate Pastrana's concessions to the FARC until the deadlocked negotiations collapsed amidst continued violence on both sides.

Despite the serious security situation, the proposal for Plan Colombia sparked vociferous domestic opposition in Colombia (Tate, 2015: 191–217). The strongest critiques came from the FARC, who saw US security assistance as proof of bad faith from the government. Criticism emerged from civil society organisations on the left of Colombian electoral politics. However, this opposition had little access to institutional or political veto points within Colombia.

Pastrana's success in advancing Plan Colombia did not emerge from his political strength or deft management of domestic politics. At the time, the State Department

worried that dismal popular support for Pastrana – just 21 percent – would undermine implementation (Long, 2015: 208). The president's relations with the Colombian Congress were so contentious that Pastrana proposed new elections to disband the body; Congress responded by threatening the same against him. Despite that, only a handful of legislators expressed serious opposition to Plan Colombia (Long, 2015: 220–221). Nor did criticism of Plan Colombia resound with a public that increasingly demanded a harsher approach to the FARC by 2001. The electoral environment provided few veto points against Plan Colombia.

In distributional terms, Plan Colombia offered new resources, with many interest groups benefitting (Avilés, 2008: 415–418). The military received the most, but many groups got something. Few actors with institutional access lost out. Plan Colombia harmed the interests of marginalised constituents, such as coca-growing *campesinos* in the Putumayo region (Tate, 2015), but their lack of electoral weight or institutional access meant they had little influence on Colombian policymaking. They directed their efforts towards US NGOs with the hope of creating external constraints. In the Colombian political mainstream, polarisation around greater US involvement was limited. Colombia's main political forces had all supported US involvement, particularly around drug trafficking (Crandall, 2008). Liberal Party presidential candidate Horacio Serpa and his previous boss President Ernesto Samper had contentious relations with the United States, but neither could mobilise electoral support against Plan Colombia. Instead, the growing political opposition to Pastrana focused not on his bellicose cooperation with the United States but on his attempts to reach negotiated peace with the FARC. Without a congressional or electoral pathway, or access to veto processes, even an unpopular president easily marginalised domestic opposition, congruent with presidentialist expectations.

### *Case 2: US Military Bases*

In the mid-2000s, amidst growing tensions with Venezuela, Colombian President Uribe expressed concerns to the United States about his country's lack of defensive capabilities *vis-à-vis* its neighbour. Uribe believed that a formal US military presence in Colombia would signal US commitment and deter Venezuela (Carvajal, 2011; Bitar, 2015). Negotiations for an enhanced US–Colombian security cooperation agreement started in 2005, with the goal of establishing seven US military bases in Colombia. US interest was increased by Ecuador's decision not to renew a US basing lease at Manta, due to expire in 2009. In addition to the bases, Uribe requested a US commitment to supply Colombia with material in case of a conflict with Venezuela and access to an anti-aerial defence system. Uribe negotiated the accords in secret, and then moved to sign the agreement without congressional review, citing presidential authority to expand previous bilateral treaties. Uribe favoured the agreement even after the US de-linked base access from military concessions. Given his popularity and Colombia's traditional alignment with the United States, Uribe expected to advance the basing agreement without domestic contestation (Bitar and González, 2018), even requesting that the agreement be worded in a way that eschewed the need for congressional ratification.

The agreement enjoyed strong support from Uribe's broad political coalition, including Defence Minister Santos, who later succeeded Uribe in the presidency, and leading legislators, who did not demand congressional involvement. When partial information about the deal leaked in 2008, it provoked opposition along ideological lines from social movements and leftist parties in Colombia. However, domestic opponents could not

impose political costs, as they lacked congressional strength to block the agreement, and the issue failed to generate adequate electoral opposition to threaten a strong, recently re-elected president.

Internationally, Brazil, Ecuador, and Venezuela adamantly opposed an increased US military presence in South America. However, regional pressures did not sink the US-backed deal. Uribe personally visited or called most South American presidents to explain the agreement and calm their concerns (Carvajal, 2011: 296–301). US Secretary of State Hillary Clinton, Secretary of Defence Robert Gates, and President Barack Obama issued assurances that the US presence would not affect Colombia's neighbours. Furthermore, Colombia threatened to walk away from Unasur, Brazil's regional project, demonstrating that Uribe prioritised the bases over regional pressures (Bitar, 2015: 135–138). Despite adamant opposition from Venezuela and strong reservations from Brazil, with the help of Peru, Chile, Uruguay and Paraguay, Colombia blocked a regional declaration against the bases and completed the agreement. Uribe, it seemed, had turned back regional pressures and insulated the agreement from domestic opposition.

When it seemed the crisis had passed, in 2009, a local magazine revealed that the agreements would grant immunity to US personnel in Colombia and allow a permanent US presence. Colombian NGOs demanded a review from the Constitutional Court, arguing that the agreement created new obligations that had to be ratified as a new treaty. In August 2010, the court declared the agreement void without congressional approval. The court's decision came as President Santos took office, forcing the new president to send the agreement to Congress or let it perish. Despite his earlier personal support for the agreement, Santos feared the politicised ratification process would weaken his congressional coalition, which he needed to advance an eventual peace process with the FARC. Instead, Santos found a formula of policy substitution in the form of 'quasi-bases' (Bitar, 2015), through which Colombia offered base access without formal leases, relying on tacit understandings and expansive interpretations of previous agreements. US operations continued, including military training, drug interdiction, communications, and surveillance (Bitar, 2015: 153). Santos's second-best option convinced the United States that while a formal agreement was preferable, it was unnecessary. The two sides achieved some goals while protecting Santos's political capital.

Strong presidentialist assumptions would project Uribe's preference for bases to materialise without major constraints. Thanks to US support, the external environment was favourable, even in the face of furious, but ultimately ineffective, criticism from Colombia's neighbours. Given the bases' high priority and relevance for national security, one would expect the president to isolate the agreement from domestic institutions and implement his preferred policy.

### *Case 3: Colombian Trade with China*

During a 2012 state visit to China, President Santos personally announced preliminary studies for the negotiation of a free trade agreement (FTA) with China. Santos called the proposed China FTA 'very, very important' for his administration's economic agenda and argued that an FTA would attract Chinese investment, stimulate exports of meat and dairy products, and improve Colombia's international economic insertion. The countries quickly signed a memorandum of understanding to review the feasibility of an FTA (Cancillería de Colombia, 2012; Peña, 2012). Building on previous high-level visits, the Santos administration sought to boost Colombian agricultural exports to



China and redress Colombia's large bilateral commercial deficit (Pastrana Buelvas et al., 2017).

The proposal touched distributional concerns affecting powerful interests, provoking intense domestic opposition. Colombian imports from China had increased nearly eight times over a decade, with Chinese manufactured exports often competing with Colombian industry (Gallagher and Porzecanski, 2010: 46–56). Colombian industrial exporters had barely penetrated the Chinese market and perceived limited opportunities there (Pastrana Buelvas et al., 2017: 423). Colombian companies responded to the proposal with 'intensified requests to protect domestic products' from competition (Gonzalez, 2014), and denounced Chinese-origin counterfeit and contraband goods. In response, the government enacted antidumping measures against many Chinese imports (Ministerio de Comercio, Industria y Turismo de Colombia, 2016).

The proposed talks sparked a struggle between two influential business associations and their allies. The Asociación Nacional de Empresarios de Colombia (ANDI, National Association of Entrepreneurs) opposed the proposed FTA, in contrast with its support for an earlier deal with the USA. A 'pro-industry coalition' of automobile manufacturers, entrepreneurs, unions, academics, NGOs, and politicians joined ANDI in opposition. Although opposition to FTAs typically originates from the Colombian left, fear of Chinese competition sparked criticism from pro-business conservative sectors, including from Santos's political allies. ANDI exercised extraordinary influence. Its director, Luis Carlos Villegas, was Santos's friend; he was appointed Ambassador to Washington soon after helping kill the proposed FTA with China. Former Conservative Senator Marta Lucía Ramírez, an ANDI ally, argued: 'It's good to look at Asia, but an FTA with China would get into the lion's den [...] [I]t would be very risky for our manufacturing and would be quite damaging to employment in Colombia' (Ramírez, 2012). Agriculture was the only sector defending an FTA with China. Rafael Mejía of the Sociedad de Agricultores de Colombia (SAC, Agricultural Society of Colombia) argued that 'the Asian giant brings great business opportunities for its partners and for the creation of jobs' (Portafolio, 2012), echoing Santos's arguments about China's demands for food (Portafolio, 2013).

Turning to congressional allies, Colombia's industrialists raised a credible threat of moderate political costs. Members of Santos's coalition, including the Conservatives and his Partido de la U, echoed ANDI's arguments that China was an unfair trader and Colombia had 'nothing to win' (Caracol Radio, 2012a). The breadth of opposition made it clear Santos lacked the votes for an FTA; pushing it further could damage the president's legislative support at a critical political juncture. Despite the agro-lobby's enthusiasm, the first planned meeting between Colombian and Chinese officials to explore bilateral negotiations was scuttled. The cancellation followed an August 2013 meeting, in which the Commerce Ministry failed to broker consensus between ANDI and SAC (El Tiempo, 2013). Opposition did not entirely end Colombian government attempts to boost economic relations with China. In an act of policy substitution, Colombia negotiated a bilateral investment treaty that accomplished some administration goals and avoided foreclosing economic talks with China. Investment liberalisation faced less opposition from the industrial sector than trade liberalisation. Although the two governments still mentioned a possible FTA, there was no progress amidst continued opposition.

If this case conformed with presidentialist assumptions, the president would have bypassed or co-opted those who feared Chinese competition. Presidents may respond to interest group opposition by subsidising losers or creating an overriding congressional

coalition around exporter interests to push forward the agreement. A similar process occurred in Colombian FTAs with the United States and South Korea, in which opposed interests were placated with subsidies (Silva, 2007: 118). Regarding China, however, stronger and more widespread domestic opposition halted FTA negotiations and pushed Santos to a weak form of policy substitution.

#### *Case 4: Colombia and Nicaragua in the International Court of Justice*

Colombian presidents and the Foreign Ministry have long emphasised respect for international law as a pillar of Colombian foreign policy, even in cases where substantial sovereign territorial interests were at stake. The most prominent case – which shows how high costs threatened by domestic opposition can reverse presidential preferences – involved a dispute with Nicaragua.

Since 1980, Nicaragua has contested Colombian possession of San Andrés Island, along with neighbouring smaller islands, cays, and surrounding waters. The disagreement originates with a treaty, signed by a US-occupied Nicaragua in 1928, that granted Colombia authority over the islands and waters, while recognising Nicaraguan sovereignty over its Caribbean coast and two nearby islands. Colombia interpreted the treaty as a definitive declaration of a maritime border at the 82nd meridian; Nicaragua argued that because the country was under foreign occupation at the time of signing, the treaty should be void. In 2001, Nicaragua's government took the case to the International Court of Justice, to which both Colombia and Nicaragua granted compulsory jurisdiction.

During the decade-long legal dispute, Colombian Presidents Pastrana, Uribe, and Santos all emphasised that Colombia was committed to respecting its international commitments under the 1948 Pact of Bogotá, in which Latin American states pledged to solve territorial disputes through ICJ arbitration. Every Colombian president since 2001 had declared that the ICJ's ruling on the dispute would be respected regardless of its content. President Santos and his government stressed that the Pact of Bogotá shaped core Colombian preferences in the matter, even when a declaration from the court signalled trouble for Colombia by denying that the 1928 treaty established a definitive maritime border. Although the statement opened up questions about Colombia's control over the waters and islands east of the 82nd meridian, Colombian Foreign Minister María Ángela Holguín insisted in April 2012 that Colombia would respect the ICJ's authority, even if the final ruling partially rejected Colombian pretensions. Days before the ruling, she stated that the court's decisions usually gave 'a little bit to one part and another bit to the other' (Holguín, 2012). Such a ruling, the Santos administration argued, would still be favourable for Colombia, since Nicaragua claimed the islands and all surrounding waters. The foreign minister stressed adherence to international law.

The backlash started almost immediately, with a group in Congress demanding Holguín's resignation, invoking an absolute need to defend Colombian territory (Caracol Radio, 2012b). Facing growing pressure, the Santos administration launched a public relations offensive based on the idea that Colombia would inevitably win and see its territory preserved (León, 2012). Contrary to Colombian hopes, the November 2012 ruling was, as Holguín had intimated, Solomonic. The ICJ recognised that the 1928 treaty gave Colombia authority over the islands and cays east of 82°, but assigned most surrounding waters to Nicaragua. Longstanding expressions of presidential preferences, restated before political pressure began to mount in April, suggested that Colombia would accept

the ruling. Instead, the decision became highly contentious for reasons owing less to the facts of the ruling than to the costs threatened by domestic opposition.

The political context created opportunities and incentives for the opposition to exploit the ruling and challenge Santos. In the preceding years, the coalition that had supported Santos as Uribe's designated successor had disintegrated into an intense political feud between *uribistas* and Santos's followers. Santos's re-election campaign had been launched before the ruling, and Uribe indicated that he would designate a follower to oppose Santos. In that political context, Uribe ideologically mobilised questions of territorial sovereignty to oppose the ruling for electoral advantage – even though Uribe's own government had argued the case at the ICJ and similarly pledged adherence to the decision.

Santos's followers denounced Uribe for 'playing politics' and accused him of hypocrisy (Semana, 2012). The retorts fell flat, as Uribe took advantage of Santos's vulnerability on the ideologically polarised issue to threaten high costs – quite possibly electoral defeat. Ultimately, Santos gave in to Uribe's political gambit and declared that the ICJ ruling would be recognised 'but not applied'. With weak legal justifications, Santos cited the constitutional requirement that new borders be established by a formal treaty. Santos not only reversed his positions on the Nicaraguan case, but also eroded the Colombian international legal tradition by withdrawing the country from its 60-year commitment to the Bogotá Pact.

If this case conformed with presidentialist assumptions, one could expect Santos to maintain the commitment to accept the ICJ ruling and insulate the issue from domestic opposition. The case was not expected to create much turmoil, given the longstanding consensus on accepting the ICJ's ruling – a consensus that had included Uribe. However, in a context of rapidly strengthening opposition from Uribe against Santos and his peace deal, the ruling became one more vehicle for the former president's attacks against his successor. Uribe's ideological framing of the issue pitted Colombian nationalism against its international juridical tradition. Even though the Santos administration initially considered the ruling a moderate success, once the opposition raised the stakes, Santos backtracked and reversed decades of Colombian foreign policy.

## **Presidentialism and Alternative Explanations**

Three of the cases above illustrate how domestic opposition can reshape or reject Colombian presidents' foreign policy preferences. This suggests the need for models in CFPA that encompass presidents' leading role while also recognising domestic actors and processes. Contested presidentialism brings a broader set of domestic actors into focus and shows how they can affect policy by using institutional and political veto points to impose costs. Nonetheless, the explanatory utility of the model should be compared against alternatives present in the literature. (Table 1 below). The role of external constraints is emphasised in LAFPA. Two explanations beyond presidentialism, bureaucratic opposition (Darnton, 2014) and political coalitions (Schenoni, 2018) are also considered. While helpful, these explanations do not match the evidence.

Colombia appears a 'most likely' case for US influence throughout the period. However, external constraints, understood as structural factors or direct US opposition, do not perform well as explanations in these cases. The exception is Plan Colombia, in which US and Colombian presidential preferences largely coincided. Pastrana's preferred foreign policy advanced even as his peace talks with the FARC failed. However, US

**Table 1.** Support for Alternative Explanations

Case	External	Presidentialism	Bureaucratic	Coalitional
Plan Colombia	Yes	Yes	Yes	Yes
ICJ	No	No	No	Yes
China FTA	No	No	No	Yes
Bases	No	No	No	No

Source: Authors' elaboration.

preferences diverged somewhat from the outcome of the US basing agreement case under Uribe, and the US role has limited relevance in the ICJ case. While one might imagine that US pressures prompted the rejection of a Chinese FTA, this does not emerge from the details of the case. Nor does it concur with external evidence; major US trading partners in the region, notably Peru, established FTAs with China. US objections were muted.

Recent work highlights the importance of bureaucratic opposition or acquiescence (Darnton, 2014) and coalitional politics (Schenoni, 2018) to Latin American foreign policymaking. A bureaucratic explanation is congruent with the outcome of the Plan Colombia case, but is partially contradicted in the three divergent cases. The strongest Colombian bureaucratic actors had much to gain from Plan Colombia, and they supported presidential preferences. While this is congruent with expectations, those same actors favoured the basing agreement under Uribe. However, the Constitutional Court rejected their positions, along with the president's. In the proposed China FTA, relevant bureaucratic interests favoured the deal, but lacked support outside the government and could not advance their preferences. With respect to the ICJ decision, the Foreign Ministry supported adherence to international law, but exercised little influence on Santos's ultimate position. Bureaucratic opposition was not key to the rejection of presidential preferences in any of the three divergent cases.

A coalitional explanation is complementary to some of the veto processes highlighted here. Coalitional politics help account for the China FTA's failure, although the divide between industry and agriculture introduces ambiguity. Ultimately, industry had better coalitional options and enjoyed more institutional access. For Plan Colombia and the US bases, no broad opposition coalition emerged, despite criticism from the left. Despite coalitional weakness, institutional factors allowed for a judicial rejection of presidential basing preferences. A coalitional argument appears congruent with Santos's U-turn on the ICJ decision; beyond a few international lawyers and diplomats, no group called for accepting the adverse ruling. That gave Santos space to reverse course and seek to pre-empt the formation of an opposition coalition that would increase his electoral difficulties.

Strong presidentialism, external constraints, and bureaucratic opposition perform poorly against these cases; coalitional politics provides a useful general approach in three cases. As shown below, 'contested presidentialism' offers a stronger explanation of the three cases of successful opposition.

In case two, President Uribe, with Santos as his defence minister, showed clear preferences for formal US military bases. Aware of the issue's political and regional sensitivity, Uribe tried to exclude the issue from domestic contestation by drafting an agreement that eschewed the need for congressional ratification. However, an ideologically opposed minority appealed to the Constitutional Court as a veto point to halt foreign bases. The court partially supported their position by demanding congressional ratification of a

new agreement, a moderate political cost that Uribe had already signalled he would not accept. Santos, now president, turned to policy substitution, allowing the United States to use Colombian bases without a formal agreement.

In the rejection of a proposed FTA with China, Santos reiterated the negotiation's importance for his economic agenda. However, distributional concerns prompted intense mobilisation of economic interests that felt threatened by liberalised trade with China. These interests worked through Congress, where opposition was more cohesive and potent than in the electorate as a whole, to threaten an institutional veto. These interest groups, mainly manufacturers, were able to impose moderate costs – not a loss of office, but a challenge to the congressional support of a president who badly needed it. As such, the executive opted for a weak form of policy substitution via an investment agreement, while indefinitely delaying a deeper economic deal (Pastrana Buelvas et al., 2017).

In the ICJ case, decades of Colombian state policy – embraced by the Santos administration – stressed adherence to international law and arbitration. However, Uribe mobilised ideological concerns around territorial sovereignty, using national sentiments to appeal to electoral channels. Unexpectedly for Santos and his foreign ministry, Uribe skilfully deployed the ruling in a popular challenge, which became salient because of the electoral calendar and Santos's relative political weakness. The credible threat of high political costs – loss of office in the upcoming elections – stopped Santos from accepting the ruling. Facing that challenge, he backed away from his previous position, with no notable policy substitution (León, 2012).

These three cases contrast with the case of Plan Colombia, where domestic opposition lacked access to political or institutional veto points and could not effectively impose political costs. In that case, President Pastrana maintained substantial isolation of the decision-making process even in the face of domestic opponents who denounced Colombia's subordination to the goals and methods of US drug policy (Long, 2015; Tate, 2015).

## Conclusion

This article has challenged the determinism and narrow focus of commonplace presidentialist assumptions in CFPAs. Clearly, presidents matter; however, three of four cases provide evidence of anomalies that are not well explained within the limits of the commonly employed presidentialist lens. The 'contested presidentialism' model recognises the clear role of the president but suggests more encompassing ways to understand the role of domestic politics in Colombian foreign policy, foregrounding the costs imposed on presidents and the mechanisms available in opposing foreign policy. Domestic actors and institutions may be less visible than presidents, but they affect policy processes, impose costs, and shape Colombian foreign policy in ways unanticipated by the current literature and even by presidents themselves. The contested presidentialist argument goes beyond bureaucratic and coalition explanations to illustrate the complex domestic political environment and potential costs that Colombian presidents face in foreign policymaking.

While this study is limited in terms of generalisability, the presidentialist assumption is common throughout LAFPA, not only regarding Colombia. An additional limitation emerges from the pragmatic assumption of revealed presidential preferences as a starting point; however, if presidents anticipate domestic opposition in their preference formation, domestic influence may be even greater. This requires closer study.

Contested presidentialism suggests avenues for future research into how other political and institutional contexts shape possible veto points and mechanisms for imposing costs. Additional research may use this model to examine presidential success as well, exploring how and when presidents insulate the foreign policy process against domestic opposition. Latin American presidents elsewhere may face similar pressures in different contexts. In foreign policy, Latin American presidents may be first movers, but they do not always have the last word.

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## References

- Allison, G. (1971) *Essence of Decision: Explaining the Cuban Missile Crisis*. Little, Brown: Boston.
- Amaya, R. (2017) 'Las Propiedades de la Política Exterior Colombiana: repensando lo que sabemos del accionar externo del país' in A. Tickner and S. Bitar (eds.) *Nuevos enfoques para el estudio de las relaciones internacionales de Colombia*. Universidad de los Andes: Bogota, 39–64.
- Avilés, W. (2008) 'US Intervention in Colombia: The Role of Transnational Relations'. *Bulletin of Latin American Research* 27(3): 410–429.
- Bennett, A. and Elman, C. (2006) 'Qualitative Research: Recent Developments in Case Study Methods'. *Annual Review of Political Science* 9: 455–476.
- Bernal, J. and Tickner, A. (2017) 'Imaginario de política exterior y proamericanismo en Colombia' in A. Tickner and S. Bitar (eds.) *Nuevos enfoques para el estudio de las relaciones internacionales de Colombia*. Universidad de los Andes: Bogota, 3–38.
- Bertucci, M. (2013) 'Scholarly Research on US-Latin American Relations: Where Does the Field Stand?'. *Latin American Politics and Society* 55(4): 119–142.
- Bitar, S. (2015) *US Military Bases, Quasi-Bases, and Domestic Politics in Latin America*. Palgrave Macmillan: Basingstoke.
- Bitar, S. and González, D. (2018) 'Colombia y Trump, entre la amistad y las drogas'. *Foreign Affairs Latinoamérica* 18(1): 25–32.
- Borda, S. and Gómez, S. (2015) 'The Internationalization of Colombia's Current Peace Process: From Isolation to Containment' in J. Rosen and B. Bagley (eds.) *Colombia's Political Economy at the Outset of the Twenty-First Century from Uribe to Santos and Beyond*. Lexington Books: Lanham, 241–262.
- Borda, S. and Tickner, A. (eds.) (2011) *Relaciones internacionales y política exterior de Colombia*. Universidad de los Andes: Bogota.
- Cancillería de Colombia (2012) 'Entra en vigor el acuerdo de inversiones entre Colombia y la República Popular China'. [WWW document]. URL: <https://www.cancilleria.gov.co/en/content/entra-en-vigor-el-acuerdo-de-inversiones-entre-colombia-y-la-rep%C3%BAblica-popular-china> [accessed 19 February 2016].
- Caracol Radio (2012a) 'Congreso le pide al Gobierno que no firme un TLC con China'. [WWW resource]. URL [https://caracol.com.co/radio/2012/05/13/economia/1336906260\\_687175.html](https://caracol.com.co/radio/2012/05/13/economia/1336906260_687175.html) [accessed 23 April 2019].
- Caracol Radio (2012b) 'Congresistas piden renuncia de la Canciller por declaraciones sobre La Haya'. [WWW resource]. URL [https://caracol.com.co/radio/2012/04/25/nacional/1335351120\\_676995.html](https://caracol.com.co/radio/2012/04/25/nacional/1335351120_676995.html) [accessed 23 April 2019].

- Carvajal, L. (2011) 'El acuerdo de cooperación militar entre Colombia y Estados Unidos: ¿Disuasión por soberanía?' in D. Cardona (ed.) *Colombia: una política exterior en transición*. Fescol: Bogota, 273–305.
- Cason, J. and Power, T. (2009) 'Presidentialization, Pluralization, and the Rollback of Itamaraty: Explaining Change in Brazilian Foreign Policy Making in the Cardoso-Lula Era'. *International Political Science Review* 30(2): 117–140.
- Crandall, R. (2008) *Driven by Drugs: US Policy Toward Colombia*. Lynne Rienner: Boulder.
- Darnton, C. (2014) *Rivalry and Alliance Politics in Cold War Latin America*. Johns Hopkins University Press: Baltimore.
- De Faria, C., Lopes, D. and Casarões, G. (2013) 'Itamaraty on the Move: Institutional and Political Change in Brazilian Foreign Service under Lula da Silva's Presidency (2003–2010)'. *Bulletin of Latin American Research* 32(4): 468–482.
- De Lima, M. and Santos, F. (2001) 'O Congresso e a política de comércio exterior'. *Lua Nova* 52: 121–149.
- Drekonja Kornat, G. (1982) *Colombia: política exterior*. Universidad de los Andes: Bogota.
- Evans, P., Jacobson, H. and Putnam, R. (eds.) (1993) *Double-Edged Diplomacy: International Bargaining and Domestic Politics*. University of California Press: Berkeley.
- Fenwick, T., Burges, S. and Power, T. (2017) 'Five Faces of Presidential Governance: Insights from Policy-Making in Democratic Brazil'. *Policy Studies* 38(3): 205–215.
- Gallagher, K. and Porzecanski, R. (2010) *The Dragon in the Room: China and the Future of Latin American Industrialization*. Stanford University Press: Stanford.
- Gardini, G. (2010) 'Executive–Legislature Relations in Foreign Policy: A Case Study in Incipient Regional Integration'. *Bulletin of Latin American Research* 29(2): 224–237.
- Gardini, G. and Lambert, P. (eds.) (2011) *Latin American Foreign Policies: Between Ideology and Pragmatism*. Palgrave Macmillan: New York.
- George, A. and Bennett, A. (2005) *Case Studies and Theory Development in the Social Sciences*. MIT Press: Cambridge.
- Holguín, M. (2012) 'Canciller advierte que fallos de la Corte Internacional de Justicia son "salomónicos"'. Interview on W Radio, 25 April.
- Jenne, N., Schenoni, L. and Urdinez, F. (2017) 'Of Words and Deeds: Latin American Declaratory Regionalism, 1994–2014'. *Cambridge Review of International Affairs* 30(2–3): 195–215.
- Lindsay, J. (1992) 'Congress and Foreign Policy: Why the Hill Matters'. *Political Science Quarterly* 107(4): 607–628.
- Long, T. (2015) *Latin America Confronts the United States: Asymmetry and Influence*. Cambridge University Press: New York.
- Lopes, D., Faria, C. and Santos, M. (2016) 'Foreign Policy Analysis in Latin American Democracies: The Case for a Research Protocol'. *Revista Brasileira de Política Internacional* 59(1): 1–17.
- Mainwaring, S. and Pérez-Liñán, A. (2014) *Democracies and Dictatorships in Latin America: Emergence, Survival, and Fall*. Cambridge University Press: Cambridge.
- Malamud, A. (2015) 'Presidentialist Decision Making in Latin American Foreign Policy: Examples from Regional Integration Processes' in J. Domínguez and A. C. Velasco (eds.) *Routledge Handbook of Latin America in the World*. Routledge: New York, 112–123.
- Marcella, G. (2008) *War Without Borders: The Colombia-Ecuador Crisis of 2008*. Strategic Studies Institute: Carlisle.
- Milner, H. (1997) *Interests, Institutions, and Information: Domestic Politics and International Relations*. Princeton University Press: Princeton.
- Milner, H. and Tingley, D. (2015) *Sailing the Water's Edge: The Domestic Politics of American Foreign Policy*. Princeton University Press: Princeton.
- Ministerio de Comercio, Industria y Turismo de Colombia (2016) 'Dumping'. [WWW document]. URL <http://www.mincit.gov.co/publicaciones.php?id=30184> [accessed 17 February 2016].

- Monroy, M. C. and Sánchez, F. (2017) 'Foreign Policy Analysis and the Making of Plan Colombia'. *Global Society* 31(2): 245–271.
- Mora, F. O. and Hey, J. (eds.) (2003) *Latin American and Caribbean Foreign Policy*. Rowman & Littlefield: Lanham.
- Negretto, G. (2009) 'Political Parties and Institutional Design: Explaining Constitutional Choice in Latin America'. *British Journal of Political Science* 39(1): 117–139.
- Neto, O. and Malamud, A. (2015) 'What Determines Foreign Policy in Latin America? Systemic versus Domestic Factors in Argentina, Brazil, and Mexico, 1946–2008'. *Latin American Politics and Society* 57(4): 1–27.
- Pardo, R. and Tokatlian, J. (1988) *Política exterior colombiana: de la subordinación a la autonomía?* Universidad de los Andes: Bogota.
- Pastrana Buelvas, E., Castro, R. and González, P. A. (2017) 'Las relaciones entre Colombia y China: perspectivas para una asociación estratégica, comprehensiva e integral' in E. Pastrana Buelvas and H. Gehring (eds.) *La proyección de China en América Latina y el Caribe*. Pontificia Universidad Javeriana: Bogota.
- Pérez-Liñán, A. (2005) 'Democratization and Constitutional Crises in Presidential Regimes: Toward Congressional Supremacy?'. *Comparative Political Studies* 38(1): 51–74.
- Polga-Hecimovich, J. and Trelles, A. (2016) 'The Organizational Consequences of Politics: A Research Agenda for the Study of Bureaucratic Politics in Latin America'. *Latin American Politics and Society* 58(4): 56–79.
- Ribeiro, P. and Pinheiro, F. (2016) 'Presidents, Legislators, and Foreign Policy in Latin America'. *Contexto Internacional* 38(1): 467–501.
- Schenoni, L. (2018) 'The Argentina-Brazil Regional Power Transition'. *Foreign Policy Analysis* 14(4): 469–489.
- Seawright, J. and Gerring, J. (2008) 'Case Selection Techniques in Case Study Research: A Menu of Qualitative and Quantitative Options'. *Political Research Quarterly* 61(2): 294–308.
- Shugart, M. and Carey, J. (1992) *Presidents and Assemblies: Constitutional Design and Electoral Dynamics*. Cambridge University Press: New York.
- Shugart, M. and Mainwaring, S. (1997) 'Presidentialism and Democracy in Latin America: Rethinking the Terms of the Debate' in M. Shugart and S. Mainwaring (eds.) *Presidentialism and Democracy in Latin America*. Cambridge University Press: New York, 12–54.
- Silva, L. (2007) 'El proceso de negociación del TLC entre Colombia y Estados Unidos'. *Colombia Internacional* 65: 112–133.
- Starr, H. (2000) 'Substitutability in Foreign Policy: Theoretically Central, Empirically Elusive'. *Journal of Conflict Resolution* 44(1): 128–138.
- Tate, W. (2015) *Drugs, Thugs, and Diplomats: US Policymaking in Colombia*. Stanford University Press: Stanford.
- Tickner, A. (2003) 'Seeing IR Differently: Notes from the Third World'. *Millennium* 32(2): 295–324.
- Tickner, A. (2007) 'Intervención por invitación: claves de la política exterior colombiana y de sus debilidades principales'. *Colombia Internacional* 65: 90–111.
- Tickner, A. and Bitar, S. (eds.) (2017) *Nuevos enfoques para el estudio de las relaciones internacionales de Colombia*. Universidad de los Andes: Bogota.
- Tsebelis, G. (2002) *Veto Players: How Political Institutions Work*. Princeton University Press: Princeton.

## Newspapers

- El Tiempo, 2013. Cancelan primer encuentro para negociar TLC con China. El Tiempo, 2 September.



*Domestic Contestation and Presidential Prerogative*

- González, P., 2014. La industria arrecia peticiones para proteger productos nacionales. *El Tiempo*, 9 May.
- León, J., 2012. Las omisiones, errores, excesos e inconsistencias del Gobierno frente al fallo de la Haya. *La Silla Vacía*. [WWW document]. URL <https://lasillavacia.com/historia/las-omisiones-errores-excesos-e-inconsistencias-del-gobierno-frente-al-fallo-de-la-haya-373> [accessed 20 May 2019].
- Peña, E., 2012 Colombia prepara firma de TLC con China. *El Tiempo*, 8 May.
- Portafolio, 2012. Críticas al TLC con Corea se extienden al acuerdo con China. *Portafolio*, 10 May.
- Portafolio, 2013. Cancelan primer encuentro para negociar TLC con China. *Portafolio*, 2 September.
- Ramírez, M., 2012. Es positivo mirar a Asia, pero un TLC con China sería meternos en la boca del lobo. *El Colombiano*, 13 May.
- Semana, 2012. Liberales dicen que Uribe 'hace política' con el fallo de la CIJ. *Semana*, 12 November.