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# Criticism and justification of negotiated compromises

## The 2015 Paris Agreement in Dutch parliament

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The paper focuses on conflicts about an already negotiated compromise, taking as its example a debate in Dutch parliament about the approval of the Paris Agreement on climate change of 2015. It deals with a variety of worries that opponents of approval may advance and the arguments in its defense thus invited. It concludes with a profile of dialogue providing reasonable options for those involved in such a conflict.

**Keywords:** argument schemes, compromise, criticisms, Paris Agreement, profile of dialogue, stock issues

### 1. Introduction: Justifying a second best outcome

Argumentation and negotiation are intimately connected. But how? That depends on the setting: *In advance of negotiation*, argumentation may be used to convince others to participate in a negotiation; *as negotiations proceed*, it may be used to convince others to accept an offer. The role of argumentation in these two settings we discussed in other papers (van Laar and Krabbe, 2016, 2018a, 2018b). But in a third setting, *after negotiation*, there are again occasions for the use of argument.

In this paper, we attend to some of the arguments that may follow upon a negotiation process. We focus on those settings where negotiators, at an earlier occasion, succeeded in closing a deal but where this agreement meets with critical questions, and possibly also harsher forms of criticism, from those who are to approve or to ratify the result. Such conflicts about an already negotiated compromise, or *conflicts about compromise* for short, are part and parcel of democratic life, and more generally of settings where we need to defend to our friends or partners some kind of collaboration with mutual enemies or competitors. As an example of a conflict about compromise, we deal with a parliamentary debate between

a minister, who just participated in successful international negotiation talks, and members of parliament, who want answers to some of their critical doubts about the compromise she helped to negotiate.

The ways of criticizing a negotiated compromise are manifold, and the task of justifying it is correspondingly demanding. As compromises bring sacrifice, critics typically scrutinize them closely so as to get clear on how the promised gains balance against the expected losses. To accede to a compromise sometimes requires giving up on realizing one's moral or other deeply engrained ideals, and such an accommodation to the adverse demands of competing parties may threaten or reduce one's integrity and credibility. Conflicts about compromise typically invite arduous discussion, and those who defend a negotiated compromise by means of reasoning can expect this reasoning to be critically tested in turn.

In cases of elaborately negotiated international compromises on environmental issues, such as the 1997 Kyoto Protocol or the 2015 Paris Agreement, the task of justifying them is particularly demanding. After the official signing, the game is not over: In each of the signatories' countries the debate about the ratification of the compromise will now start. And this debate is again bound to be complicated because of the underlying uncertainties and differences of opinion, the diversity of values that are involved, and the seriousness of the consequences of each decision. Criticism is to be expected from various sides.<sup>1</sup>

How then, if ever, can compromise be justified?<sup>2</sup> In the theory of argumentation, various concepts have been developed that are helpful in answering this question, such as the notion of an argument scheme and the corresponding critical questions (Walton, Reed and Macagno, 2008), and the idea of a profile of dialogue (Krabbe, 2002). In this paper, we exploit these instruments so as to start developing a theory of arguments specifically about the justification of negotiated compromises. We shall start developing a list of critical questions that can assist one in evaluating a negotiated compromise and making up one's mind about whether or not to approve or to ratify it. Critical questions often lead to argumentative responses, which can elicit further critical questioning, etc. In this way, we work towards a normative theory of arguments in conflicts about compromise.

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1. For strategic considerations when dealing with climate sceptics, see Goodwin (2019).
  2. In this paper we deal with the justification of compromise from the normative stance of resolution oriented persuasion dialogue. A different perspective on justification is taken by Fabian Wendt (2016), according to whom public justifiability – understood as justifiability to persons with different beliefs and evaluative standards (p. 119) – is a moral value that provides a moral reason in favor of a compromise (even if the agreed upon arrangement is not fully just), because public justifiability adds to a stable and peaceful society, is respectful towards people, and fosters mutual moral accountability.

An example of an argumentative probing into the virtues and vices of a negotiated compromise is the plenary debate within the Dutch parliament<sup>3</sup> on May 19, 2016, in which the Minister for Infrastructure and the Environment,<sup>4</sup> Mrs. Dijksema (Labor Party – *PvdA*), presents the Paris Agreement on climate change of December 12, 2015. In this debate, Dijksema and the spokespersons of the various parties within the House of Commons discuss the merits of the Paris Agreement that Dijksema herself helped to negotiate. Notwithstanding the appreciation for the minister's role, and the enthusiasm about the agreement of all but one of the parties, the members of parliament question the minister critically. To meet these criticisms, the Minister defends the compromise in various ways.

We illustrate the various dialectical options with fragments taken mainly from this parliamentary debate about the Paris Agreement. To the extent that our dialectical approach sheds light on these fragments, the latter support the utility and appropriateness of our framework.

In Section 2, we elaborate on our concept of *compromise* and introduce the debate about the Paris Agreement that figures as our example of a *conflict about compromise*, the kind of setting targeted in this paper. In Section 3, we deal with possible criticism of the use of negotiation as a means to deal with a particular conflict – such as the many-sided antagonisms between the 196 countries and the EU at the Paris Conference – rather than using some other kind of means. We indicate the ways in which the proponent of a negotiated compromise may justify her choice for some sort of compromise solution. In Section 4, we examine a variety of worries that opponents may advance in response to a particular negotiated compromise, and the variety of arguments in its defense thus invited. We conclude, in Section 5, with a profile of dialogue providing reasonable options for those involved in a conflict about compromise, thus providing some guidance for those who take an interest in analyzing, evaluating, and possibly even producing a criticism or justification of a negotiated compromise. We also note the role of threats and pressure, but end with a positive view on the role of argumentation.

## 2. Conflicts about compromise

In a conflict about compromise, a proponent is committing herself to argue in support of a compromise that has been negotiated at an earlier occasion. Before we investigate, in the next two sections, the various points of criticism with which to assess the acceptability of the compromise it is useful to discuss the concept of

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3. More specifically, in the *Tweede Kamer* (House of Commons).

4. In Dutch: the *Staatssecretaris van Infrastructuur en Milieu*.

a compromise and the kind of conflict a successful compromise may give rise to if it needs the approval of others.

About the concept of compromise, Weinstock writes:

At a first approximation, a compromise is a position that, with respect to the issue at hand, is from the point of view of parties locked in debate or negotiation inferior to the positions that both (or all) bring to a decision making process (a negotiation, an election, or more trivially a decision-oriented discussion among friends), but which both have reason to accept instead of the position they favor. They may favor X, when only the issue at hand is in view, but favor Y when all things are duly considered. (Weinstock, 2013, p. 539)

At an earlier occasion we adopted this definition, and added five clarifying remarks. First, the parties to a compromise have *not resolved* their differences of opinion about policies; second, a compromise is *not imposed* even though, typically, it was preceded by some degree of pressure; third, a compromise results from some kind of *trade*, and if it settles a difference of opinion some kind of “commodification” has made this possible; fourth, next to action commitments, a compromise generates a *propositional commitment* to explain and defend that the agreement at hand merits acceptance and implementation given that there exists an irresolvable disagreement with peers about what policy to pursue; fifth, a compromise, though not resolving the initial difference of opinion, does typically bring about the resolution of a special, *second-order*, difference of opinion, to wit the difference of opinion about what policy to adopt in a particular setting where the initial, *first-order*, difference of opinion happens to be irresolvable (van Laar and Krabbe, 2016, 2018a).

The following definition matches with Weinstock’s definition and with our conceptual clarifications:

A *compromise* for competing parties  $P_1, \dots, P_n$  is an expressed agreement<sup>5</sup> C among the parties about the endorsement of an arrangement<sup>6</sup> A in response to a particular problem or issue, such that:

- the competing parties have acknowledged that a failure to come to a shared agreement about the issue forms a negative outcome  $A_o$ ,<sup>7</sup> and

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5. Thus, a compromise generates commitments, among them propositional commitments.

6. We follow Wendt in characterizing the substance of a compromise as an “arrangement” (2016).

7. The reasons for assessing  $A_o$  negatively may, or may not, differ between the competing parties.

- each competing party  $P_i$  has proposed an arrangement  $A_i$  as its preferred solution to the problem or issue, such that these arrangements are not (fully) compatible with one another,<sup>8</sup> and
- each competing party  $P_i$  prefers  $A_i$  to  $A_j$ ,<sup>9</sup> yet it prefers  $A$  to some other  $A_j$  ( $j \neq i$ ), as well as to  $A_o$ , and
- $A$  is conceived of by each competing party as involving unforced<sup>10</sup> concessions<sup>11</sup> to other parties.

Underlying the possibility of a compromise is the willingness of each competing party to evaluate arrangements on two levels (see Wendt, 2016, pp. 21–34). On the first level, a party evaluates the acceptability of arrangements that would solve the problem or settle the issue while either disregarding other parties' preferences or supposing itself capable of convincing the other parties of what it regards as the superior arrangement. On the second level, the party evaluates arrangements (typically proposed in offers) while taking into account that the competing parties' consent is required to make any progress on the issue whereas not all other parties can be convinced to accept what this party regards as the superior arrangement. In a compromise, the competing parties are and remain locked in disagreement on the first level, yet they manage to find agreement on the second level.<sup>12</sup>

The Paris Agreement is an example of compromise in this sense, and a very intricate one. The competing parties, 196 countries and the EU, collectively aimed at reducing climate change and its effects, and managed to find a middle ground among many divergent preferences (see Lewiński & Mohammed, 2019, in this issue). This becomes clear from observations by Radoslav S. Dimitrov, who participated in some of the negotiations rounds, and summarized the key sacrifices and gains:

China failed to obtain legally binding actions in the North and had to concede global stocktaking and stronger international transparency than they liked. Yet, they largely won the battle over differentiation [among developing countries] in both finance and mitigation. The simple binary division between developing and developed countries is now gone but a subtle (and more ambiguous) differentiation remains between developed and “other” countries, “in light of national circumstances.” The US managed to weaken the legally binding character of national

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8. This refers to the first-order difference of opinion.

9. Thus, the first-order difference of opinion has remained unresolved.

10. Thus, a compromise is not imposed.

11. Thus, a compromise is based on a kind of trade.

12. Thus, they do not resolve their *first-order disagreement*. Yet in those situations where they disagreed about how to accommodate an irresolvable first-order disagreement, a compromise implies a resolution of that *second order disagreement*.

actions but lost on their [opposition to] mandatory and progressive evolution as well as on [their opposition to a binary] financial differentiation [between developing and developed countries]. The EU won on transparency, finance, and loss and damage – but failed to win quantitative global emission targets and restrictions on bunker fuels from international aviation and shipping. Island nations lost on adaptation and loss and damage but their delegates chanted a song outside the plenary hall, celebrating their success in obtaining a strong reference to a 1.5 degree limit as an aspirational goal of the treaty. (Dimitrov, 2016, p. 5)

The problem solved by means of the Paris Agreement is not, or at least not directly, the problem of climate change itself. Rather the problem solved is a multifaceted policy problem: China wants to respond to climate change without too much transparency measures, while the EU sets great store by transparency – and so forth for the many other components of the policy problem.

Some main ingredients of the Paris Agreement are: a shared goal of reducing temperature rise “well below 2 degrees Celsius above pre-industrial levels, pursuing efforts to limit the temperature increase even further to 1.5 degrees Celsius” (UNFCCC, 2016); the decision to realize that goal by means of “nationally determined contributions,” so that each individual nation itself decides on the required policy measures and reports on its progress every five years to the other signatories; the decision to support developing countries financially to adapt to a changed climate and to reduce emissions.

The chances of realizing any agreement were small, because of the complexity of the issue, the high stakes involved, and the sheer number of negotiating parties. Dimitrov explains the success of the Paris Agreement: (a) by reference to a change of mind regarding the seriousness of climate change and the economic benefits of limiting such change; (b) as enabled by a previous bilateral agreement in 2014 between China and the US regarding climate change and clean energy, and (c) as a result of a skillful orchestration by the French hosts. He writes: “Secrecy is common in diplomacy, but the French finesse it to a new level” (p. 6), by step-wise crafting the deal in closed sessions with only key players, keeping all others in the dark by minimizing paper traces, so as to be able to present the final text on the last day as a take-it-or-leave-it deal (p. 6). On December 12, 2015, the parties signed the agreement, which was to become operational upon ratification by at least 55 countries together responsible for at least 55% of global emissions.

As announced in the Introduction, the Dutch Minister for Infrastructure and the Environment, Mrs. Dijkma (Labor Party), attended a meeting of the Dutch Parliament (see Note 2) on May 19, 2016, in order to answer parliamentarians’ questions about the Paris Agreement, which she herself had helped to negotiate in Paris. We approach this parliamentary setting as including a conflict about compromise, with Mrs. Dijkma (sometimes assisted by other members of parliament)

in the role of proponent, committing herself to the defense of the Paris Agreement as meriting endorsement and ratification, and the members of parliament as opponents, critically testing and probing the various parts of Dijksma's position. We focus on those fragments of the debate that play a role in the exchange of criticism and argument revolving around this position, leaving other fragments aside, such as those that deal with future policy measures for meeting the objectives of the Paris Agreement.<sup>13</sup>

### 3. Should we settle for a compromise?

In a conflict about a compromise, there is – prior to all critical questions that can be asked about specific features of the compromise – the question whether the problem that the compromise is supposed to solve concerns matters that are at all suitable for negotiation and compromise with competing parties. Should one not rather deal with the problem in some other way? For instance, shouldn't one keep trying to convince the competing parties of the superiority of one's own favored solution? Or would it not be better to bring the case to court or to some other adjudicator? Might it not be wrong to cooperate with the competing parties? Briefly formulated: "Should we settle for compromise?" This critical question expresses what we shall call *general compromise criticism*. It does not target the specific compromise the proponent defends, but targets the fact that the proponent defends some compromise, regardless of the details of the deal at hand. Before we illustrate the notion of general compromise criticism with an example from the Dutch parliamentary debate, we first present a somewhat clearer example from U.S. politics. Along the way, we present a number of options for those who aim to justify their choice for settling for some sort of compromise solution.

Opponents can be skeptical about, or even rebellious against, the choice for one or other compromise as the proper kind of response to a particular policy problem. For example, in the 2016 platform of the Republican Party, what is rejected is not so much the Paris Agreement, but the very idea of crafting a compromise under the guidance of the U.N.'s Framework Convention on Climate Change.

#### Example 1. Rejecting agendas

"We reject the agendas of both the Kyoto Protocol and the Paris Agreement, which represent only the personal commitments of their signatories (...) We firmly believe

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13. A conflict about compromise gives rise to particular argumentative genres. See for example Rodrigues, Lewiński and Üzelgün (2019).



environmental problems are best solved by giving incentives for human ingenuity and the development of new technologies, not through top-down, command-and-control regulations that stifle economic growth and cost thousands of jobs.”

(Republican Platform, 2016, p.22)

There are various ways to respond to such criticism. First, it can be pointed out that there is no good alternative to compromise, for example because the competing parties need to change their policies yet cannot all be convinced with persuasive argumentation to act in line with anyone’s particular cravings. Thus, one may frame the choice for compromise as being for each party instrumental to its own interests. But one may also stress the moral or ideological reasons for making the best of various suboptimal options. Second, the proponent can support the choice for compromise by favoring compromise as an outcome that is more democratic than a one-sided solution, that fosters community better than a less cooperative outcome, or that is more epistemically virtuous than an outcome that has not taken competing interests and opinions into account (Weinstock, 2013; van Laar and Krabbe, 2016, 2018a).

In the debate in the Dutch parliament, hardly any doubts are being expressed about the desirability of collective action based on a global compromise. Mrs. Dik-Faber (Christian Union – *CU*), for example, explains in her contribution that “the urgency is enormous” for the reason that sea levels are rising (quite a concern in the Netherlands) and that postponing collective action brings great economic risks (Tweede Kamer, 2017, p.1). However, Example (2) (*Fiddling*) suggests that Mr. Madlener, representing the one climate skeptical party, the Party for Freedom (*PVV*), does not consider the situation suitable for any compromise at all, since none of those involved in the compromise can be trusted. After having raised the issue in his speech (Tweede Kamer, 2017, p.5), Madlener interrupts the minister when she answers the questions she received:

### Example 2. Fiddling

MP Madlener (Party for Freedom – *PVV*): “Further it has come out that China already has been fiddling with figures about emissions. Of the, I suppose, 190 countries that joined in with this, a gigantic number are corrupt. Of course they love to cash those 100 billion dollars. How can it be that the Minister trusts all those countries? They are all bound to fiddle.” (Tweede Kamer, 2017,<sup>14</sup> p.16)

Mrs. Dijkma, in her answers, emphasizes that the deal is of historic importance by legally binding the ratifying countries to reduce temperature rise, and to compensate developing countries financially, thus making the needed progress towards

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14. Quotes from this source (the parliamentary proceedings) were all translated by the authors.

climate neutrality (pp. 15–19). Her response to Madlener's skepticism is to underline the obligation of the signatories to report every 5 years about their progress.

It can be expected that considerations for rejecting any compromise on a particular issue can also be used for rejecting a specific compromise. This will be confirmed in the next section, where we turn to criticizing specific compromises.

#### 4. Should we settle for this compromise?

Prompted by a conflict about compromise, opponents can be expected to critically examine the proponent's prescriptive standpoint that they should endorse or ratify this specific negotiated compromise. We start by giving a general sketch of the dialectic that results from advancing and responding to more basic stock issues (critical reactions), and then examine the more detailed stock issues (critical reactions) and the kinds of subordinate discussion that are successively triggered as the dialogue proceeds. Thus, we stepwise arrive at a general scheme with which negotiated compromises can be defended. We will reconstruct the various fragments from the Dutch parliamentary debate as raising stock issues, dealing with e.g. trust, moral acceptability, and legal admissibility, on this more detailed level.

When faced with a compromise that requires endorsement or ratification, the obvious issue to look into is whether the situation that results from endorsing (or ratifying) the negotiated compromise is preferable to the situation that results from not endorsing it. This basic criticism invites the proponent to advance an argument along the lines of the following pattern of reasoning, which we label *the first argument scheme for the Defense of a Negotiated Compromise*:

(Standpoint) You should endorse (ratify) this compromise, because (Reason 1) by doing so we achieve X at the expense of Y, and (Reason 2) although we sacrifice Y, this arrangement of achieving X at the expense of Y is preferable to not accepting this compromise.

Further criticism of Reason 1 will be discussed in Section 4.1, below. When it comes to Reason 2 we expect opponents to have possibly two worries on their minds. First, they may feel that the status quo is not so bad after all, and possibly better than what results from accepting the deal, for instance because they may expect that a rejection of the deal will leave them with alternative opportunities foreclosed by a ratification of the compromise in hand. If the opponents advance such criticism, the proponent will be inclined to argue that the negotiated compromise at hand outcompetes the status quo, or, more precisely, outcompetes the situation that results from rejecting the deal. Secondly, opponents may feel that a better compromise could have been realized, and that it still can be crafted, or at

a future moment will become realizable, so that ratifying the deal now deprives them of a more optimal outcome that would be enabled by reopening the negotiation process. If the opponents advance such criticism, the proponent will be inclined to argue that the negotiated compromise at hand outcompetes other feasible compromise outcomes. These criticisms, targeting Reason 2, invite the proponent to advance an argument along the lines of the following pattern of reasoning, which we label *the second argument scheme for the Defense of a Negotiated Compromise*:

(Reason 2) Although we sacrifice Y, achieving X at the expense of Y is preferable to not accepting this compromise, because (Reason 2.1) an arrangement of achieving X at the expense of Y is preferable to a situation in which the issue is not settled by means of a compromise, (Reason 2.2) as well as to alternative arrangements that happen to have been and still are or will become feasible outcomes of a (possibly: reopened) negotiation dialogue.

The argument scheme made up from the first and the second argument scheme for the defense of a negotiated compromise we label simply *the argument scheme for the Defense of a Negotiated Compromise*, with basic Reason 1 as its schematic *inventory premise*, basic Reason 2.1 as its schematic *progress premise*, and basic Reason 2.2 as its schematic *optimality premise*.

As arguments for the Defense of Negotiated Compromise are used to convince supporters, clients, or allies to accept a deal, they need to be distinguished from *expediency arguments*, which form the kind of argument in which competing parties are to be convinced to accept an offer within a negotiation dialogue. Whereas the latter will try to exploit values and facts as competing parties have accepted them, the former will try to exploit values and facts as they have been accepted along one's own ranks. Both expediency arguments and arguments for the defense of negotiated compromise can be seen as specific kinds of "practical arguments" (Fairclough and Fairclough, 2012, see also Fairclough, 2019, on deliberation, in this issue).<sup>15</sup>

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15. Fairclough and Fairclough deal with practical arguments generally, whereas we focus on those practical arguments that are used to justify a negotiated compromise. This prompts us to emphasize the role of preferences, rather than the role of means, goals and circumstances, as they do in their account (2012, Chapter 2). Our accounts, however, are compatible, given that means, goals, and circumstances would plausibly surface in the dialogue when the proponent of a negotiated compromise is challenged to defend the progress premise or the optimality premise in some detail. See Lewiński and Mohammed for an analysis of some opening speeches of the Paris conference from the stance of the scheme for practical argument proposed by Fairclough and Fairclough (Lewiński and Mohammed, 2019, in this issue).

We will understand the stock issues raised in this parliamentary debate as more detailed critical probes into the acceptability of the three basic reasons that figure as premises in arguments that exemplify the argument scheme for the Defense of a Negotiated Compromise. These stock issues, of course, in turn invite specific types of arguments, yet we will refrain from discussing the various argument schemes to be expected at these advanced levels of the dialectic, and limit ourselves to the answers that can be found in the debate in the Dutch parliament.

#### 4.1 Examining the inventory premise

First, opponents can question the acceptability of the inventory premise by raising *issues regarding the gains*: How reliable is the proponent's estimation that, indeed, the promised gains X will be realized? Possibly, the proponent overlooks obstacles, relies on an overly optimistic estimation, or has even fallen prey to wishful thinking.

For example, opponents can raise *trust issues*, casting doubt on the reliability of a competing party and the probability that it will live up to a particular promise that is part of the agreed upon arrangement. In the opponents' view, then, this reduces the likelihood that all of the promised gains X will in the end be acquired. In response, the proponent may try and argue in support of the competing party's reliability, either by referring to its track record or by referring to its interest in complying with the agreed upon arrangement, or she may point out that trustworthiness is not that relevant an issue because of the existence of a sufficient measure of implementation guarantees as part of the arrangement. In Example (3) (*They don't give a damn*), it is plausible that the trust issue targets the details of the compromise in hand (in addition to targeting the very idea of settling for compromise, as in Example (2) (*Fiddling*)).

##### Example 3. They don't give a damn

MP Madlener (Party for Freedom – *PVV*): “How then do you feel about all the other signatories of this agreement, all those corrupt regimes, all those countries that love to take over our industry? Yes, they are joining in with this agreement, but in the end they will simply conclude: just give that employment up to us. The Netherlands are standing up again like a reverend wagging his finger, while our country gets ever poorer. In the Netherlands, too, there will no doubt always be some green oddball (...) whereas in China or wherever on earth people don't give a damn about this agreement and will simply resign from it when it suits them. We want to see this agreement going straight into the waste-paper basket.” (Tweede Kamer, 2017, p. 6)

Minister Dijksma (Labor Party – *PvdA*) points out that all signatories have committed themselves wittingly: “Wittingly, I would say. We shall also see to it that they

observe it. For the beauty of this agreement is namely that for the first time in history all those 195 countries must by a so-called ‘intended contribution,’ i.e. a national contribution, show how they are delivering. Next we are going to check again, every five years, whether each country keeps to its promises. That will result in political pressure all over the world.” (Tweede Kamer, 2017, p. 16)

Opponents can also have other issues regarding the gains, regardless of trust issues, and suspect that the positive consequences have been presented overly optimistically on other grounds. Mr. Madlener, in Example (4) (*Burning Canadian woods*), even expects that Dutch policies in line with the Paris agreement will have negative effects.

#### Example 4. Burning Canadian woods

MP Madlener (Party for Freedom – *PVV*): “A number of measures The Netherlands are about to take are, surprisingly, bad for the environment. Yes, you hear me well. Our government, for instance, supports together with a number of environmentalist groups the proposal to use biomass as supplementary fuel. As a consequence, billions’ worth of wood will be cut. Canadian woods will be shipped to The Netherlands and they are going to be burned here in our coal-fired power stations. It is really true!” (Tweede Kamer, 2017, p. 6)

MP Vos (Labor Party – *PvdA*): “... it is also clear that [biofuels and adding of biomass] actually do have a positive effect on the environment. (...) The beauty of biomass is that one may create negative CO<sub>2</sub>-emissions; for one can burn up biomass, in which CO<sub>2</sub> has been stored. You look puzzled, Mr. Madlener, but just listen to this. The CO<sub>2</sub> you may then store, in the North Sea for instance. Consequently, you are drawing CO<sub>2</sub> from the atmosphere. The problem of global warming, about which all present agree except the Party for Freedom, can in that way be solved.”

(Tweede Kamer, 2017, p. 9)

Second, opponents can question the inventory premise by raising *issues regarding the losses* Y. For instance, they may query the completeness of the list of foreseen sacrifices and other downsides that the deal brings with it, or the transparency of the way in which they have been presented: Are the bad consequences Y all the bad consequences that need to be taken into account? Does the proponent give a fair and frank presentation of the disadvantages, or did she provide a one-sided account by covering up or even neglecting possible problems or flaws of the deal? Raising such issues targets specifically the negative part of the inventory premise.

There are a number of special cases of querying the negative aspects of the deal. One is to point towards the interests and rights of particular stakeholders, such as the citizens in poor countries, and raise doubts about whether their interests have been taken into account to a sufficient measure, or whether

their rights will be heeded. If we accept the deal, will we treat them with due respect? Opponents can put emphasis on these specific stakeholders' interests and rights, or on the moral, legal, or political principles that have been put into place to protect interests and rights like these. Alternatively, opponents can stress their own integrity that gets damaged by endorsing an arrangement that fails to pay due respect to stakeholders or that violates basic principles. Human rights, for one, are often presented as non-negotiable, so that any deal that puts these into jeopardy will be dismissed. If the emphasis is on stakeholders' interests and rights, we speak of opponents who raise *morality issues*, and if it is on one's own integrity we speak of *integrity issues*. Example (5) (*Those countries that are hardest hit*) provides an illustration of a morality issue. Another special group of downside issues regards allegedly legal problems of the deal, such as that it would violate national laws or international agreements or that its legal foundation falters: *legality issues*, as illustrated in Example (6) (*Legally binding*). Further, opponents can point out that the compromise at hand goes against the present current of popular opinion, so that there is reason to think that it lacks democratic support and legitimacy: *support issues*. Of course, this list of stock issues is not complete, and opponents may point at still other adverse consequences of the deal, as illustrated in Example (7) (*Silly Billies*).

#### **Example 5. Those countries that are hardest hit**

MP Wassenberg (Party for the Animals – *PvdD*): “I finish by expressing my great concern about the failure to provide adequate climate funding for those countries that are hardest hit, while having contributed least to global warming. They need to be supported as they suffer the disastrous consequences of droughts, floods, and the rising sea level.”  
(Tweede Kamer, 2017, p. 3)

Minister Dijksma (Labor Party – *PvdA*): “I agree with those saying that we should all over the world do collectively more to combat poverty and to install climate policies. In fact, that has always been the position of the Dutch government. We did indeed bring this forward at numerous occasions.”  
(Tweede Kamer, 2017, p. 17)

#### **Example 6. Legally binding**

MP Madlener (Party for Freedom – *PVV*): “The Minister talks about a historical agreement. She also says that the agreement is legally binding. In article 28 of that agreement, however, I read the following. ‘At any time after three years from the date on which this agreement has entered into force for a party, that party may withdraw from this agreement by giving written notification.’ So one may withdraw from the agreement. How can I reconcile this with the Minister’s story about ‘legally binding’?”

Minister Dijksma (Labor Party – *PvdA*): “If one does not withdraw from it, it is in force.”

MP Madlener (Party for Freedom – *PVV*): “Yes. Now Donald Trump did already say that as far as he is concerned this agreement will be brushed aside. He is going to renegotiate and it is to be tackled quite differently. Each party may of course quite easily appeal to article 28 and say: you may very well say that it is legally binding, but if we want, we withdraw from the whole agreement.”

Chair: “Then, of course, first Trump should happen to be elected.”

(Tweede Kamer, 2017, p. 16)

### Example 7. Silly Billies

MP Madlener (Party for Freedom – *PVV*): “[when it comes to reducing emissions] big industrial nations such as China need to do much less [than the Netherlands, comparatively]. The result is a relocation of our manufacturing to other parts of the world. Our businesses will be simply strangled by competition.”

(Tweede Kamer, 2017, p. 5)

Minister Dijkma (Labor Party – *PvdA*): “My last visit to China was in my capacity as Minister of Economic Affairs. You see that the citizens of Chinese cities constitute the upward pressure for reforms in the environmental policies. If you can walk on the street only with a mask because the air is no longer clean, there is a problem. I am grateful and appreciate that the Chinese government takes this very seriously and now in as many as seven regions experiments with an Emission Trading System.

There are actually developments that give me positive feelings, though they are not all positive, I am also aware of that. There we must find the point of departure to prevent – Mr. Madlener is right in pointing that out – that we get a waterbed effect: production that disappears on this side, but is resumed elsewhere in worse

circumstances. Of course we’ll watch out for that. I’ll have more to say about this in my contribution. We are no silly Billies.”

(Tweede Kamer, 2017, p. 16)

## 4.2 Examining the progress premise

Opponents can raise doubts about the positive assessment of the compromise as compared to what plausibly results from not endorsing and ratifying the deal. The opponents may think that the “best alternative to a negotiated agreement” (Fisher, Ury & Patton, 2011, pp. 99–108) (or even a second- or third best such alternative) is to be preferred to implementation of the compromise, and that the chances of realizing such an alternative outcome are sufficiently great. These *issues regarding progress* come in two kinds. The proponent can be questioned about his portrayal of the no-deal scenario. Doesn’t she provide an overly gloomy sketch, possibly even engaging in fear mongering? Climate change skeptics or deniers can be characterized as challenging or rejecting what they regard as pessimistic and fear-mongering accounts of the consequences of refraining from adopting stricter

emission and other “green” policies, and as thereby challenging or denying the progress premise.

Alternatively, the opponents may inquire into whether the proponent provides an overly upbeat sketch of the compromise’s gains, and possibly even engages in wishful or utopian thinking. In that case, the issue raised is that the scenario based on endorsement of the compromise is not all that good.

Here we must note that the stock issues discussed above in the context of examining the inventory premise may also underlie the opponents’ critical assessment of how the negotiated compromise compares to the no deal situation. After all, the more you think the estimates of gains and losses must be revised so as to reduce the gains or to increase the losses, the less likely you would be convinced that the deal is to be preferred above the no deal option. Thus in examining the progress premise, opponents may raise some of the same questions as in the case of the inventory premise: They may think that the competing party’s lack of trustworthiness would be wrecking the deal; or that endorsement amounts to selling one’s soul; or that a lack of legal or popular support undermines the deal’s legitimacy; or, more generally, that balancing the real gains against the real losses leads one to reject the deal. In Example (8) (*Saving the chance of saving*), Mr. Wassenberg gives his positive view on how to balance the pros and cons, whereas in Example (9) (*100 billion dollars*), Mr. Madlener gives his negative view based on his climate change skepticism.

#### **Example 8. Saving the chance of saving**

MP Wassenberg (Party for the Animals – *PvdD*): “The Paris climate summit did not result in rock solid arrangements, but even so something was done. Admittedly, Paris did not save the planet, but perhaps Paris saved the chance to save the planet.”

(Tweede Kamer, 2017, p. 2)

#### **Example 9. 100 billion dollars**

MP Madlener (Party for Freedom – *PVV*): “The Party for Freedom is against this climate agreement. We think it is a bad agreement for The Netherlands. This agreement is not going to provide a solution of the so-called climate problem, if there happens to be such a problem. First, it is an agreement that will relocate industries and therefore emissions to other countries, (...)”

(Tweede Kamer, 2017, p. 5)

“One of the items of the climate agreement, of which the *VVD* [People’s Party for Freedom and Democracy] is such a staunch advocate, is the distribution of 100 billion dollars among corrupt countries.”

(Tweede Kamer, 2017, p. 12)



### 4.3 Examining the optimality premise

Finally, opponents can raise doubts about the positive assessment of the compromise as compared to more optimal and yet feasible outcomes of the negotiation process, also in light of the possibility of returning to the negotiation table and reopening the negotiation process to try to obtain a better deal. Possibly, it's still feasible to obtain a better result. These, we label *issues regarding optimality*.

It only makes sense to reject a compromise as suboptimal if there still is an opportunity for reopening the negotiation process. The opponents in a conflict about compromise may be in a position to use their influence and reject the current text of the compromise in an attempt to pressure the competing parties into returning to the negotiation table, if only the competing parties' desire for an agreement is sufficiently strong. A reason for the opponents to consider a better outcome feasible can be their belief that the negotiators did not adopt a good negotiation strategy, and failed to seize opportunities.<sup>16</sup> Alternatively, they may have reason to believe that, since the negotiations took place, the situation and the opportunities for bargaining have changed for the better so that a reopened negotiation offers new perspectives.

In Example (10) (*Future generations*) and (11) (*She walked her legs off*), two members of parliament convey the message that, indeed, the outcome is not optimal, yet without criticizing the Minister herself for a flawed performance<sup>17</sup> and without trying to send her back to the negotiation table, which in this specific case would have been pointless. The minister, in Example (12) (*Sturm-und-Drang*) shares their assessment.

#### Example 10. Future generations

MP Van Tongeren (GreenLeft – *GroenLinks*): “The interests of future generations in the climate issue are of course of great importance but not very conscientiously embedded.”  
(Tweede Kamer, 2017, p.1)

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16. In van Laar and Krabbe 2018, we explain that the exchange of offer and counteroffer in a negotiation dialogue can be reconstructed as including an exchange of *expediency arguments*. The opponents' negative assessment of their negotiator's strategy implies the assessment that the negotiator has been convinced by an expediency argument in support of the final, winning offer, but incorrectly so.

17. In addition to a critical exchange about the merits of the compromise in hand, members of parliament are expected to hold the minister accountable, and to evaluate her performance as a negotiator at the negotiation table. We refrain from dealing with the accountability issue in this paper, but acknowledge that some optimality issues prompted by the dispute about compromise also add to the dispute about the accountability issue (see Mohammed, 2018).

**Example 11. She walked her legs off**

MP Van Veldhoven (Democrats – *D66*): “What solution does the Minister envisage in order to achieve that goal of 1.5° centigrade? In Paris, she walked her legs off for this. It was a great sight; nothing but praise in that regard.” (Tweede Kamer, 2017, p. 4)

**Example 12. Sturm-und-Drang**

Minister Dijksma (Labor Party – *PvdA*):

“I understand that part of this House is in Sturm-und-Drang to do more and proceed beyond this. I understand that very well. However, I want also for once ask you to keep in mind all that we together – let us share the success – did achieve. That’s a tremendous lot. We’ll not sit back and watch, as I just clearly stated.”

(Tweede Kamer, 2017, p. 19)

The Minister’s fiercest critic does not even regard the agreement as bringing progress, but in Example (13) (*Relocation*), his criticism focuses on the outcome as being suboptimal in a specific respect, suggesting that the negotiators failed to assign sufficient weight to a key consideration.

**Example 13. Relocation**

MP Madlener (Party for Freedom – *PVV*): “The Netherlands are already very efficient in matters of consumption of energy. The country has also fewer opportunities to reduce its emissions in a cost-effective way. Big industrial nations such as China can do with a much lesser effort. It leads to a relocation of our manufacturing to other parts of the world.”

(Tweede Kamer, 2017, p. 5)

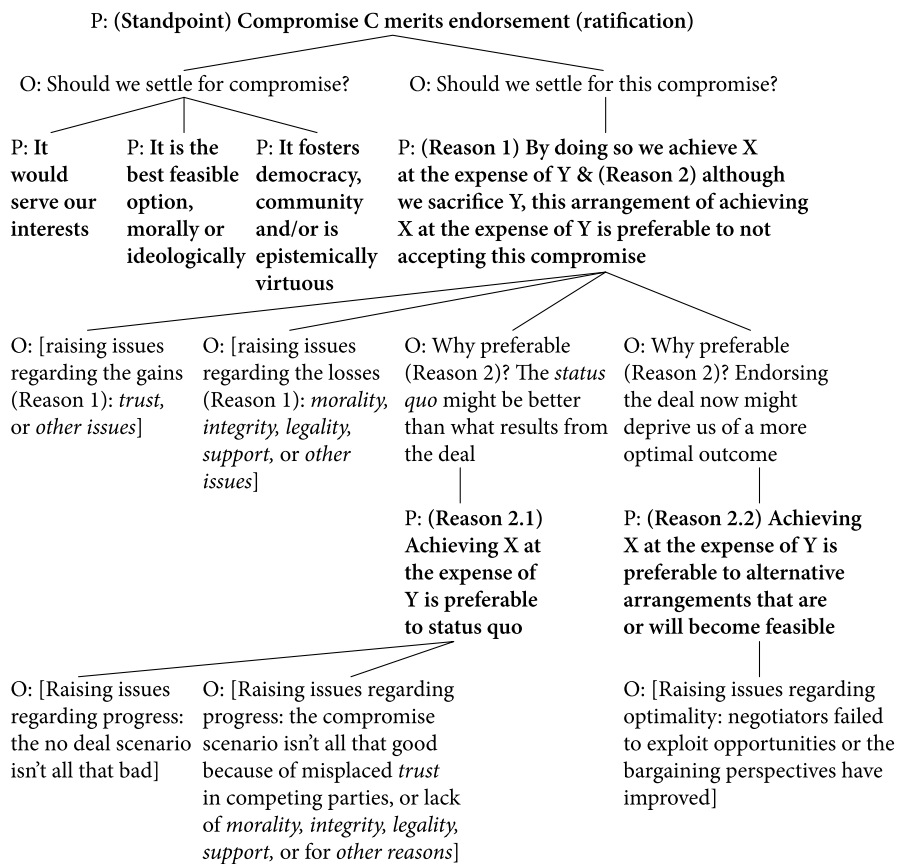
## 5. Conclusions

Above, we have dealt with the stock issues (critical reactions) that a conflict about a negotiated compromise gives rise to. We conclude this paper with an overview of the structure of attempts at justifying a negotiated compromise in light of these critical reactions, and we do so by means of a profile of dialogue that sketches the various reasonable<sup>18</sup> moves for the proponent and the opponent in a typical conflict about a negotiated compromise.

The justification of a negotiated compromise in light of the critical reactions from those who are to endorse or ratify the compromise gives rise to a specific series of stock issues, and in our profile of dialogue we show how these trigger a myriad of ways in which discussion may reasonably develop. The Dutch parlia-

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18. We consider each move in the profile to be *reasonable* in the dialogical sense of proceeding to the resolution of the difference of opinion that underlies the dialogue (van Eemeren and Grootendorst, 2004).



**Figure 1.** A profile of dialogue that provides reasonable options for the proponent and the opponent(s) in a conflict about compromise

mentary debate on the Paris Agreement contains many illustrations of criticisms focused at the inventory premise and the progress premise. In the debate, also criticism against the optimality premise as well as general compromise criticism has a role to play, albeit to a lesser extent, and we identified some fragments to illustrate also these types of criticism.

It looks as if proponents of a compromise need to keep many different frogs in a wheelbarrow. First of all, they have to get a process of negotiation going. For this their supporters as well as the competing parties must be persuaded to turn to negotiation and compromise. Second, in the course of the negotiation dialogue itself, the final compromise proposal must be convincing to each and all of the competing parties (signatories). Third, if the compromise requires the endorsement or ratification of the supporters or clients of the negotiators, there

must be argumentation available that convinces these supporters or clients of the acceptability of the negotiated compromise. Elsewhere, we discussed arguments for turning to negotiation and arguments used in the negotiation dialogue (van Laar and Krabbe, 2016, 2018a, 2018b). Among the latter were *expediency arguments* by which a negotiator can try to convince competing parties to accept an offer based upon these parties' preferences and ideas. In this paper, we have shown how a negotiated compromise may need to be justified towards one's supporters by arguments that are more likely to be based upon one's own preferences and ideas.

If needed, the proponents of a negotiated compromise can intensify the pressure on those to be convinced by increasing the gains of ratification by offering compensations, or by increasing the losses of rejection, for instance by political pressure or by mobilizing public support in favor of ratification (moves which could initiate new kinds of negotiation). At various stages of this delicate process, there is room for manipulation, blackmail, and threat, and it would require another paper to study how these relate to the argumentation that the process requires.

Here we end with a positive note. In the course of examining how a compromise can be justified in a conflict about a negotiated compromise, we have found that there are cases where the required burden of proof can plausibly be met. There can be good reasons for turning to negotiation and compromise, for accepting at the negotiation table a particular compromise proposal, and also for endorsing or ratifying a particular negotiated compromise arrangement, such as the Paris Agreement, which was indeed ratified by The Netherlands (it was approved by the House of Commons on 31 January 2017, and by the Senate on 4 July 2017), 2017. A compromise, though second best, can be a most respectable outcome.

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