

Original Research Article

International engineering English translation: A case study in FIDIC terms and practice

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Abstract: With more and more Chinese companies being involved in global business, shortage of professional technical English translators become an issue as some cases showed that this has become a barrier in daily business. I took FIDIC contract template as case study to show the importance of knowing the prevailing international practice, in-depth understanding of specific technical area and local culture and language habit in translation. I also found some interesting phenomenon of translation method evolution which are deserved for further investigation.

Keywords: Case study; Language Characteristics; Discussion

1. Introduction

There was a stadium construction project in a small country in West Africa in 1990s, funded by the African Development Bank, and a Chinese state-owned engineering company was the contractor. In the tender documents (because it was funded by the African Development Bank, English was used as tender and contractual language), the specifications for the sand used in the project were described as follows: “The sand used for the stadium foundation should be river sand, with a particle size between 0.25 and 2.5 mm. Under following circumstances sea sand can be used. (If it is deemed to be necessary, sea sand should undergo desalination treatment for at least six months and can only be used after passing the laboratory concrete test).”

Because the Chinese technical staff’s English was quite poor, and usually a dedicated translator was required to translate the tender documents or contracts into Chinese first, and then the engineers reply the tender documents like Compliance Sheet and then submit the quotation according to the procedure. And the project location was in a French-speaking country in West Africa, so there was a shortage of professional English translators. Finally, the tender documents were translated by a French translator who knew a little bit English. The above mentioned description of river sand and sea sand was translated as “River sand should be used, and sea sand is also acceptable (海砂亦可).” This technical specification was issued as annex of the contract as technical specifications.

The final result was that due to the extensive use of inadequately treated sea sand, the Employer found it totally unacceptable and requested to rectify the defects. The completed part of the concrete foundation has to be reworked, causing huge losses to the engineering company.

This project used FIDIC as contract template. So how much do we know its language?

This paper is divided into three sections. Firstly, I will briefly introduce the characteristics of legal language. Secondly, I will take FIDIC contract template as a sample case to discuss some typical word usage. Thirdly, I will take s specific word with different translations and its evolution. In the last section I will disclose the importance of knowing basic skills in translation Engineering technical document, indicating the results and discussion and open my path for further research.

2. Language characteristics of FIDIC contract

Different from other language, legal language has its own characteristics like:

Accuracy: for example, “suit” in general meaning is “suit and fit” while in legal documents it may be “civil litigation”. Another case is “action” which in legal documents it means “bring a lawsuit”.

Rigorous: the use of words and sentences is accurate and safe. It also has rigorous structure including the name of the party, legal address, the purpose and principle of concluding the contract shall be specified, specific rights and obligations of the parties, compensation for breach of contract, Force Majeure, dispute settlement, applicable legal provisions, the scope and conditions of validity of the contract and the signatures of representatives of both parties. It also has careful narration without omission such as the time, place, goods, quantity, quality, specifications and price in the contract.

Solemnity: Proper choice of words and sentence patterns is an important means to highlight solemn style.

Standardization of procedures: Legal official documents have been scrutinized by drafters and repeatedly tested by users. All the ambiguous meanings and loopholes have been abandoned one by one. Finally, a special language program has been formed. Once this program is formed, full-time legal writers pay close attention to the standardized procedures when preparing legal provisions, lawyers and parties apply legal provisions and draft contracts, in order to be impeccable.

3. FIDIC contract characteristics analysis

FIDIC is the abbreviation of the French „Federation Internationale des Ingenieurs-Conseils“, which means „International Federation of Consulting Engineers“ and is the most authoritative organization in the international engineering consulting industry. Therefore, it is still very necessary to accurately understand the original English version of the FIDIC contract conditions, and studying its language characteristics can help users achieve their goals more efficiently. There are some characteristics of its language:

3.1. Compound words

The wide application of compound words such as “hereby, hereof, herein, thereunder, whereof”, etc. For example, “The contract shall not, without the prior content of the Employer (which consent, notwithstanding the provisions of Sub-Clause 1.5, shall be at the sole discretion of the Employer), assigned the Contract or any part thereof, or any benefit or interest therein or thereunder, otherwise than by...”.(Table 1)

3.2. Modals

The wide application of modals like “must, shall, would, should...”. Through research, it can be found that when expressing obligations, responsibilities and regulations in the FIDIC contract conditions, the structure of “shall” plus a verb is always used, instead of “must” or “should”. During translation, flexible handling should be done according to the content it expresses, the degree of tone and the relationship with the context. Generally, it is translated as „shall“, „must“, „may“, or may not be translated, e.g. “if the Project Manager is not named in the Contract, then within fourteen (14) days of the Effective Date, the Employer shall appoint and notify the Contractor in writing of the name of the Project Manager.”

3.3. Parallelism and repetition

The FIDIC contract language is more like the legal style. In order to avoid ambiguity and loopholes and

make the writing accurate and strict, parallelism and repetition expressions are frequently adopted, such as the parallel use of prepositions, the parallel use of synonyms and near-synonyms, and the repeated use of sentence patterns, etc. For example, “Neither Party shall assign the whole or any part of the Contract or any benefit or interest in or under the Contract”.

3.4. Conditional adverbials

Extensive use of conditional adverbials like “if, should, unless, except, other than, save ...subject to, in case of, in case that, in the event of, in the event that, provided (also/always) that, provided (also/always) that if”. For example, “Unless indicated otherwise in the SCC, the Contract Price shall be a firm lump sum not subject to any alteration, except in the event of a Change in the Facilities or as otherwise provided in the Contract.”

Table 1. Used times of some special English words in FIDIC(red book)(2017).

Word	Used times
herein	9
hereinafter	7
hereafter	2
hereafter	2
thereafter	16
therefore	14
thereof	5
thereby	4
must	45
should	204
shall	798
if	557
unless	33
other than	8

The above mentioned language characteristics, coupled with the fact that a FIDIC contract integrates knowledge from multiple aspects such as engineering, technology, management, economy, insurance and law, can easily lead to understanding deviations, ambiguity or even misunderstandings, resulting in engineering losses and claims or disputes.

4. The terminology changes of FIDIC itself and the evolution of translation

In international business contracts, we can frequently notice the following sentence, „Time is the essence of this Contract“. No matter in international trade, international engineering, or some large-scale telecommunications projects, time is one of the most important factors in the contract fulfillment. One of its result is, another definition is introduced in the contract, Liquidated Damages or Delayed Damages.

For decades, Liquidated Damages has been understood as „delay fines“ or “delay penalty” (延期罚款) and regarded as a kind of „punishment“. After the project implementation plan is delayed due to the Contractor/Supplier’s own reasons, the Employer would impose Liquidated Damages for delay from the Contractor/Supplier according to the contract. But in fact, it is a conditional action that many Contractors/Suppliers are not clear which is if Liquidated Damages are paid in accordance with the contract, the Contractor/Supplier has the right to initiate an Extension Of Time(EOT) application to the Employer. In one word, it is to get extension of time by paying money. Therefore, if Liquidated Damages’ nature is penalty, such application for EOT cannot be initiated.^[1,2]

Liquidated Damages is negotiable compensation for damages in legal nature. In Common law, based on considerations of public policy, it strictly distinguishes Liquidated Damages from Penalty, and if it is determined to constitute a penalty, it will not be enforceable. The distinction standard between Liquidated Damages and Penalty was first established by *Dunlop V New Garage* in 1914. Lord Dunedin, on the basis of summarizing previous authoritative cases, who gave three important guidelines for distinguishing the two definition (named „Dunlop Guidelines“):^[7-13]

A. The term used in the contract („Penalty“ or „Liquidated Damages“) is not decisive, and the final decision lies with the court.

B. The essence of a Penalty is a warning (in *terrorem*) to the breaching party; the essence of Liquidated Damages is a genuine pre-estimate of future losses. To this end, both parties should estimate and determine the amount of potential losses based on the specific circumstances of each contract, and keep the calculation process and reference data, etc. as evidence materials.

C. It needs to be interpreted and judged according to the terms and inherent circumstances of each contract (at the time of contract signing instead of the time when the breach occurs).^[3,5]

Let’s first review the explanation of “Liquidated Damages” in the Cambridge Dictionary: „in a written agreement, a sum of money that one person, organization, etc. will pay to the other if the agreement is broken“.

The explanation of Penalty in the Cambridge Dictionary is „a punishment, or the usual punishment, for doing something that is against a law“.

Let’s then look at the translation results of “Liquidated Damages” and “Delayed Damages” in different translation tools:

	Google Translate	YouDao	DeepL	DOUBAO AI	FIDIC
Liquidated Damages	违约金	赔偿金 (违约金)	违约赔偿金	违约赔偿金	误期违约金
Delayed Damages	延期损害赔偿	延期损害	延期损害	延迟损害赔偿金	误期损害赔偿费

The first interesting phenomenon is that the versions of the FIDIC contract before 1999 used “Liquidated Damages”, and then it changed to “Delayed Damages” in 1999. It is precisely because of the continuous disputes over the interpretation of this clause in international engineering projects that FIDIC adopted a compromised attitude from Common Law to Civil Law (Delay & Liquidated Damages: some new ideas from FIDIC (fenwickelliott.com)).^[14]

The second interesting phenomenon is that we can see that among the four online translation tools, all four translations of “Liquidated Damages” contain the word “ 违约 ”, while “Delayed Damages”, in the four tools and FIDIC (Chinese version), none contains the word “ 违约 ”. This is a topic worthy of further in-depth discussion.^[4,6]

By the way, some wordings in the FIDIC Chinese version are still questionable. For example, „Employer“ is always translated as “ 雇主 ”. However, in mainland China, the Party A of engineering projects is usually called “ 业主 ”. Local language environment and word usage habits should be fully considered during translation. It is also interesting to research more in this area.

5. Results and discussion

With the continuous deepening and advancement of China’s „Belt and Road Policy“, more and more Chinese companies are deeply involved in the trend of globalization. There are many typical lessons from failed projects, such as the huge losses suffered by some large state-owned engineering companies in the Saudi Light Rail Project and the Polish Expressway Project. There are also many successful cases like Huawei and some new

energy vehicle companies.

Even now, with various advanced online auxiliary translation tools, including the latest AI-assisted translation tools, language barriers still exist in international business. The most important barrier here is the mastery of the legal system, the understanding of the historical changes of international prevailing practice, the familiarity with the local language and culture, and even the professional level of the translators themselves in various industries.

6. Conclusion

FIDIC document is typical legal style, but it is also mixed with a large number of technical terms and has formed its own unique language characteristics during long-term use: precise, meticulous and rigorous. For the translation of such texts, the first step is to pursue an accurate understanding of the original text and accurately express the purpose and meaning of the original text; Secondly, have certain basic professional knowledge such as engineering, trade, insurance, law and technology, and the translation does not create any ambiguity.

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