

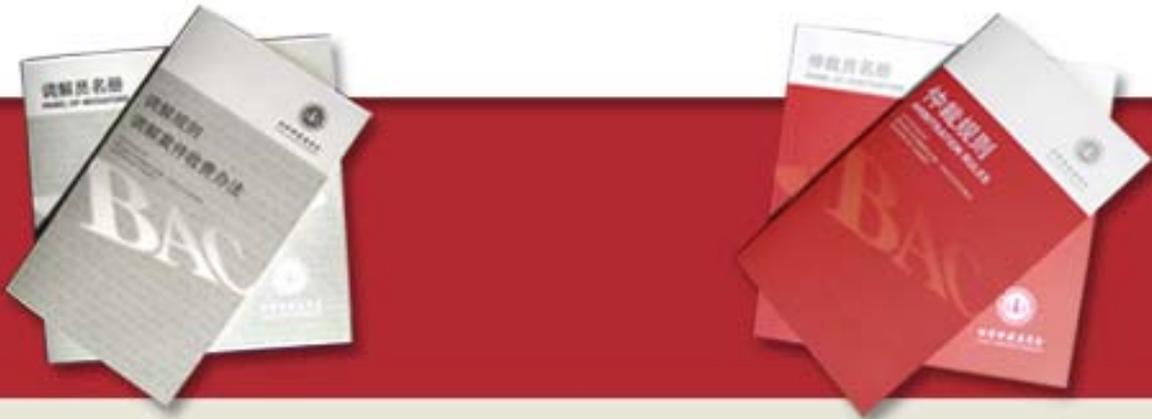


# BAC Newsletter

Issue I (Starting-publication Issue)

(April and May, 2008)

Issued by Beijing Arbitration Commission



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## ● Introduction to the Newsletter

The Beijing Arbitration Commission Newsletter (BAC Newsletter) is an electronic information periodical organized and edited by Office of Beijing Arbitration Commission (BAC). The Editorial Department of the BAC Newsletter was founded in March 2008, and the first issue was released in April 2008. This periodical is a monthly publication, and will be sent to readers for free through E-mail before the 10<sup>th</sup> of each month. The purpose of the BAC Newsletter is to provide prompt information services to arbitrators, parties, and people in various communities who are concerned in the related fields of the dispute resolution, and with the efforts

by BAC, to establish a platform of information communication for readers, and improve the service quality of the organization.

Each issue of the BAC Newsletter will be published on the BAC's website for readers' reference. Our website contains an application area for Internet subscription – after approval by Editorial Department, readers will be added to the list for free distribution. At the end of each year, the list for free distribution will be sorted and verified by the Editorial Department. Readers can notify the Editorial Department by E-mail if they wish to cancel their

subscription at any time.

The BAC Newsletter welcomes interaction and communication between our readers and the Editorial Department. The BAC welcomes readers to submit any suggestions and comments for the columns, and contents in the issues, as well as any other issues of concern.

The copyright of the BAC Newsletter is reserved by BAC, and without prior written consent, any content should not be duplicated, or publicized on the Internet, or on any other public publication.

Newsroom,  
Beijing Arbitration Commission Newsletter  
April 8<sup>th</sup>, 2008

## ● BAC's Donation Proposal for Earthquake

### BAC's Donation Proposal for Earthquake Disaster Relief in Sichuan, China

A powerful 8 magnitude earthquake hit Wenchuan, Sichuan Province on May 12th. The untimely and devastating natural disaster has so far caused hundreds of thousands dead and injured, and inestimable asset loss in eight affected provinces and municipalities of Sichuan, Gansu, Shaanxi, Chongqing, Yunnan, Shanxi, Guizhou, and Hubei, among which,

Sichuan has suffered the greatest.

All walks of life throughout China and the world are holding emergency relief efforts, and the BAC convened an urgent work meeting on May 13th, and is committed to doing its part to support the disaster relief effort. The BAC and all its members would like to ask you for your kind

donation to help those who have the greatest immediate and critical needs in the disaster area. Let us light the way with our hope, and compassion, and stand together with the earthquake victims. They are not alone, and we will help to overcome these difficulties together.



## ● Important news

### Top-line news in this issue:

**Beijing Arbitration Commission (BAC) implemented its first stand-alone Mediation Rules on April 1<sup>st</sup>, 2008.**



The Mediation Rules are formulated based on widely collecting the rich experiences from prestigious international mediation centers and by enquiring opinions from famous experts and scholars at home and abroad. The Mediation Rules will provide an effective, independent and harmonious approach to dispute resolution for business parties. They adopt the

autonomy and seeking simple and flexible procedures, and are aimed at upholding international standards to the maximum extent possible. (For details on ***the Illumination for Drafting the Mediation Rules in BAC***, please [click here](#); For ***BAC Mediation Rules***, Please [click here](#))

**Also on April 1<sup>st</sup>, 2008, the BAC will implement the newly-revised Arbitration Rules (Hereinafter abbreviated as “2008 Rules”).**



The revisions for the 2008 Rules mainly involve: (1) Rules on the delivery means for notarization and public notice of the domestic arbitration cases are cancelled, and uniformly regulates to adopt the internationally recognized method of “Mailing attempt”, (2) The lists of arbitrators will no longer be divided into the international list and the domestic list, and parties may now select arbitrators from

outside the list of arbitrators in international commercial cases, (3) The clause of “If it is stipulated to apply the rules, it will be deemed that it is agreed to submit the dispute to our commission for arbitration”. (For details on ***the Illumination for Revision of Arbitration Rules in BAC***, please [click here](#); For ***BAC Arbitration Rules***, Please [click here](#))



## ● Focus

### Interaction and Communication between Mediation Cultures in China and the USA

#### --- Report on the mediation training program between BAC and Straus Institute for Dispute Resolution at Pepperdine University School of Law, USA

(Author: Jiang Li, originally released on Page 7 of “China Legal Daily” on March 30<sup>th</sup>, 2008)

On March 23<sup>rd</sup>, 2008, in the International Conference Hall at the Beijing Arbitration Commission (BAC) was filled with warm applause as 42 students from China and the USA received their certificates for completing a sophisticated six-day mediation training course. The course was conducted by the Straus Institute for Dispute Resolution at Pepperdine University School of Law (Straus Institute), located in the USA. The program was a huge success.

[>Read more](#)



**Professor Peter Robinson during the mediation course**



**Professor Jim Craven taking charge of a mediation hearing**

### Training feedback

Editor’s Note: After the mediator training program, BAC specially carried out a questionnaire among the students, covering the results of the training, the instructors, inspirations and suggestions, differences and similarities of mediation ideas between China and America, as well as the roles of mediators and arbitrators. 36 students have provided the feedback thus far. Among the students who gave the feedback, 97% of them expressed that the mediation training program will be very helpful for them to deal with dispute settlement; 94% of the students

are satisfied with the program instructors; 100% of students are satisfied with the organization and service work in the mediation training; 53% of them express that in their arbitration practices, they often

use the dispute resolution ideas promoted in this program; and 97% of the students are satisfied with the overall impression of the mediation training program.

[>Read more](#)



**Group Discussion**



**Presenting the Certificates**  
(Wang Xuequan and Zhang Jiechao)



## Comments by Professor Thomas Stipanowich:

"We are extremely pleased with the results. I know I speak for Professor Robinson as well as myself when I say that the program was, from our point of view, a great success as well as a unique and memorable personal experience. We were very impressed with the outstanding caliber of the more than forty students, which included senior lawyers, law professors and former judges, most of whom were also experienced arbitrators. We were also extremely pleased with the way the students

embraced the material and the practical exercises, and we welcomed the opportunities we had to discuss various cultural differences with them.

All in all, our experience during the last two weeks convinced me that much good can be done by continuing this learning process. I do not know precisely what the ultimate outcome will be, but I am sure that there will be benefits for dispute resolution in China, in the U.S., and in the international sphere."



**Professor Thomas Stipanowich  
during the DRB course**

## Reports on the mediation training program by US media:

The US media also paid attention to this mediation training program as the first cooperation between China and USA. In a special news report on April 1<sup>st</sup>, 2008, Greg Katz, a journalist from Daily Journal in Los Angeles and San Francisco promptly covered this mediation training program with the title of CHINESE COME CALLING TO LEARN ABOUT U.S. MEDIATION SYSTEM, and gave it very high praise. The following is an excerpt from the paper:

..... Thomas Stipanowich and Peter Robinson, co-directors of the Straus Institute for Dispute Resolution at Pepperdine University School of Law, traveled to China to train its arbitrators in US-style mediation.

The Straus directors taught "Mediating the Litigated Case" to 40 experienced Chinese arbitrators at the invitation of the Beijing Arbitration Commission.

Stipanowich has conducted mediation training in China before, but this time, he

said, was unique. "It's probably the first major mediation training of a large group of experienced Chinese neutrals," Stipanowich said.

"We were invited to come and do this training in conjunction with the development of a new business mediation program by the Beijing Arbitration Commission," he said. "The concept is really a new one for major dispute resolution organizations in China. Heretofore, business mediation has primarily been utilized in the context of arbitration, with arbitrators acting as mediators."

"We talked about negotiating styles, particularly among lawyers," Stipanowich said. "We talked about the styles and strategies utilized by Chinese neutrals as mediators and differences between that and the range of approaches in the West." Stipanowich said the course was well received, in contrast to tepid reactions to

previous trainings.

One way likely to make China more receptive to mediation, he said, is by showing Chinese companies that mediation is an effective method of resolving business conflicts.

"The best thing would be to have two or three high-profile business cases to be mediated by these people, with U.S. counterparts," Stipanowich said. Information link: <http://www.dailyjournal.com> This article appears on Page 1 of DAILY JOURNAL NEWSWIRE ARTICLE, April 01, 2008

(Gu Xuan)



## ● Communications & Cooperation

### In-depth Cooperation: Hand-in-Hand for Win-win Results

#### —The 3<sup>rd</sup> Visit to BAC by MSOD Project Team from Pepperdine University, USA

From March 17<sup>th</sup> through the 21<sup>st</sup>, 2008, the MSOD (Master of Science of Organization Development) Project Team from Graziadio School of Business & Management at Pepperdine University, in Southern California, USA, made its 3<sup>rd</sup> visit to BAC. The members of Project Team had a symposium with the Secretary-General, arbitrator representatives, and secretaries of the BAC. Both parties communicated on issues such as the configuration of the rights and responsibilities for Commission, and how to establish a mature organizational structure for the sustainable development, etc. In its research report, by comparing the

similarities and differences between BAC and the similar international and domestic arbitration organizations, *MSOD Project Team analyzed the* advantages and challenges faced by BAC in terms of the

management system, and gave expert suggestions for the issues faced in its organizational development.

>Read more

(Chen Xi and Ding Jianyong)



**MSOD members discussing with BAC secretaries**

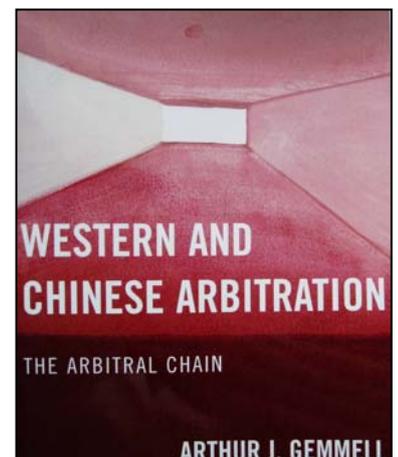


**Members of MSOD with Secretary-general of BAC MS.Wang Hongsong**

## ● Research Trends

A book titled *Western and Chinese Arbitration: the Arbitral Chain* was recently, written by PhD Arthur J. Gemmell and published by University Press of America. Professor Gemmell studied arbitration systems in China and the western world in the past and today, and from their advantages and shortcomings, he has drawn valuable conclusions. “Arbitral Chain” is a terminology invented by himthe author, which means which refers to the linkage of one arbitral era to another – essential in the understanding of how past eras have impacted the present. the connections

between arbitration era. After examining Chinese history and culture, especially Confucian culture, he carefully studied the two representatives of CIETAC and BAC as examples of arbitration in contemporary China and reviewed the execution of the arbitration awards. Disappointedly, he concluded that China does not have an arbitral chain. Furthermore, he noticed that *guanxi*, or the “relationship culture” does not have important significance in terms of an arbitral chain in China. He also pointed out that local courts must realize that this kind of short-sighted behavior, which grants local



enterprises advantages will be very negative for the Chinese economy in the long term, because this will make China an



unfavorable destination for investors and businessmen/businesspeople. It is no doubt that efforts by the arbitration organizations themselves are very important to the development of arbitration in China; court reforms are also a necessity, because

arbitration organizations cannot be an "isolated force."

Dr. Gemmell came to China for a series of surveys and studies, expecting to understand the Chinese history, culture, and contemporary arbitration practices in a deep

level, and conducted an inspiring interview with Secretary-General Wang Hongsong of BAC.

(Kong Yuan)

## ● New Laws and Regulations

### Standard for the 1<sup>st</sup> Hearing of Civil and Commercial Cases under Jurisdiction of

#### Superior and Intermediate Courts Adjusted

As reported by "People's Court Daily" on March 31<sup>st</sup>, 2008: the People's Supreme Court released to adjust the standard for the 1<sup>st</sup> hearing of civil and commercial cases

under jurisdiction of Superior and Intermediate Courts in the whole country on March 30<sup>th</sup>. The new standard will be implemented on April 1<sup>st</sup>, and in the future,

the majority of civil and commercial cases will be heard by the courts at the basic level and the intermediate courts.

### Attachment: Standards for the 1<sup>st</sup> Hearing of Civil and Commercial Cases under

#### Jurisdiction of Superior and Intermediate Courts in Beijing

1. The People's Superior Court shall be the court of first instance for civil and commercial cases with a disputed amount over RMB 200 million Yuan, and for civil and commercial cases with a disputed amount over RMB 100 million Yuan in which the permanent residential address of one of parties not in its jurisdiction, or involves parties from foreign countries, Hong Kong, Macau and Taiwan.
2. The People's Intermediate Courts and Beijing Railway Transportation Intermediate Court shall be the court of first instance for civil and commercial cases with a disputed amount over RMB 50 million Yuan, and for civil and commercial cases with a disputed amount over RMB 20 million Yuan in which the permanent residential address of one of parties not in its jurisdiction, or involves parties from foreign countries, Hong Kong, Macau and Taiwan.

(For the related regulations of other provinces, autonomous regions and municipalities in the country, please click the following information link <http://rmfbyb.chinacourt.org/public/detail.php?id=118051>)

#### Notes of Editors:

Jurisdiction is the first issue that is faced after a dispute occurs, and this why the Editors specially selected this piece of news in "New Laws and Regulations" in Jan-March, 2008. After April 1<sup>st</sup>, 2008, what changes will be brought for dispute settlement by the adjustment of the jurisdiction levels of the cases? What impact will it cause

for alternative dispute resolution that our country is making effort to establish? These are the concerns of the Editorial Department – we believe you will also have some considerations. Therefore, we would like to solicit viewpoints, opinions and contributions on this subject, which will be released in the next issue of the *BAC Newsletter* for

discussion. We also welcome contributions to the periodical "Beijing Arbitration" or "Understandings and Applicability of Arbitration Law" column under cooperation between BAC and People's Court Daily. At present, we would like to propose several themes and welcome you to participate:



1. After the amount of the cases to be accepted changed, will the number of the civil and commercial cases in the basic courts and intermediate courts rapidly increase thereafter? How will the courts carry out these cases?
2. After the jurisdiction levels of the civil and commercial cases with the large amounts are generally reduced under the current legal system, how will the system avoid the negative impacts of local protectionism?
3. How to expand the approaches for the alternative dispute resolution in civil and commercial cases?
4. What impacts will be brought for the legal policies by the changes of the hearing levels?
5. How will alternative dispute resolution methods, like arbitration and mediation, etc have the bigger social functions during this process of the changes of the legal policies?

E-mail address for contributions: [bjzhongcai@bjac.org.cn](mailto:bjzhongcai@bjac.org.cn); [jianglili@bjac.org.cn](mailto:jianglili@bjac.org.cn) (Jiang Lili)

## ● Recent news (Review from Jan 1<sup>st</sup> through April 30<sup>th</sup>):

➤ Jan 24<sup>th</sup>, 2008: As a VIP guest of the first-session (The 38<sup>th</sup> session in total) Arbitrator Saloon of BAC in 2008, Judge Feng Xiaoguang from Supreme Court made the seminar on “Specific issues for “Interpretation on the issues of governing laws in the practical applications for hearing the dispute cases for construction contracts on construction projects by Supreme Court”” in BAC. Arbitrators from the Shanghai Arbitration Commission also attended this saloon through the remote video facilities.

➤ Jan 15<sup>th</sup>, 2008: Mr. Richard Naimark, Deputy Chairman and Mr. Jun Bautista, Director of Asian Region of International Dispute Resolution Center from American Arbitration Association (AAA), attended the “Development trends of international arbitration and mediation” seminar organized by BAC.

➤ Jan 18<sup>th</sup>, 2008: Judiciary Reform Office in Supreme Court organized the “Forum on Judiciary Reforms in People’s Court: Seminar on establishing and improving alternative dispute resolution mechanisms.” 14 sub-subject teams were organized throughout the country to perform research on the subject. As members of the sub-subject team on commercial arbitration, BAC and CIETAC reported the progress of

their project together.

➤ Feb 1<sup>st</sup>, 2008: The BAC 2008 Spring-festival Tea Party was held in International Conference Hall on Floor 16. As invited, Mr. Wang Shengming, Deputy Director of Legal Works Committee in Standing Committee of National People’s Congress, Mr. Jia Dongming, Deputy Director and Mr. Duan Jinglian, Department Head of Civil Code Office in Legal Works Committee in Standing Committee of National People’s Congress and Mr. Yuan Shimin, Department Head of Law Office in the State Council, etc attended the party. Mr. Wang Shengming made a keynote speech on “Commonness and individualities of arbitrations”.

➤ Feb 26<sup>th</sup> - 29<sup>th</sup>, 2008: The 2008 National Arbitration symposia, called in by the Government Law Coordination Section in Law Office in the State Council, was held in Beijing. Over 80 participants from dozens of arbitration bodies attended the meeting.

➤ Feb 28<sup>th</sup>, 2008: Mr. Li Zhengming, Vice Secretary-General of China Insurance Association, attended the 2<sup>nd</sup>-session of the 2008 Arbitrator Saloon (The 39<sup>th</sup> session in total), and spoke on the topic of “Basic theories and practices for resolving disputes on insurance policies”. Nearly 60

participants, including related leaders and experts from Nantong Arbitration Commission and the insurance industry in Nantong, Jiangsu Province, participated in this saloon through the use of remote video facilities.

➤ March 12<sup>th</sup>, 2008: International Chamber of Commerce (ICC) announced it will establish a Sub-department of Secretary Department of International Court of Arbitration in Hong Kong, to deal with individual cases within the area according to the “Arbitration Rules in ICC”. (Information source: The official website of ICC).

➤ March 12<sup>th</sup>, 2008: The Administration Department of the State Council established the Preparation Leadership Team for China Arbitration Association, with Mr. Song Dahan as Team Leader, Mr. Dong Songgen and Ms. Lu Yunhua as Vice Team Leaders, and Mr. Jia Dongming, Mr. Xue Chunxi, Ms. Wang Yuan, Mr. Yu Jianlong, Mr. Jiang Ping, Mr. Xu Qiang, Mr. Gao Shunling, Mr. Chen Zhongqian and Mr. Shen Sibao as Team Members. (Information source: <http://www.china-arbitration.com/>).

➤ March 13<sup>th</sup>, 2008: Professor Thomas Stipanowich, Academic Director of the Straus Institute for Dispute Resolution at



Pepperdine University School of Law, and former President of International Dispute Prevention & Resolution Center (CPR Institute, carried out a one-day training seminar dispute resolution through the use of DAB/DRB. Attending the seminar were relevant professionals from ministries such as State Development & Reform Commission and Ministry of Construction, etc and those from large construction enterprises, as well as the arbitrators in the construction project field in BAC.

➤ March 14<sup>th</sup> - 16<sup>th</sup> 2008, March 21<sup>st</sup> - 23<sup>rd</sup>: The BAC cooperated with the Straus Institute for Dispute Resolution at Pepperdine University School of Law to carry out a sophisticated mediation training program, titled "Mediating the Litigated Case." Over 40 distinguished experts, including many BAC arbitrators, and participants from Taiwan and the United States attended.

➤ March 14<sup>th</sup> - 20<sup>th</sup>, 2008: The "Latest Developments in International Arbitration" seminar jointly organized by BAC, China International Economic & Trade Arbitration Commission and Jones Day Law Firm from USA, was held at the BAC.

➤ March 14<sup>th</sup> - 21<sup>st</sup>, 2008: The 15<sup>th</sup> International Commercial Arbitration Simulated Arbitration Debate Competition was held in Vienna, and students from 203 law schools in 52 countries participated in this competition.

➤ March 17<sup>th</sup> - 20<sup>th</sup>, 2008: A project team comprising of students from Pepperdine University's Master of Science of Organization Development (MSOD) program carried out a 4-day survey & research for BAC, and submitted a report on the development status of the organizational structure in BAC. As a long-term cooperation project between BAC and this

school, this has been the third research report on BAC in the MSOD project since 2006. (For details, please refer to the contents in the "Communications & Cooperation" column in this issue).

➤ March 24<sup>th</sup>, 2008: China International Economic & Trade Arbitration Commission (CIETAC), China Maritime Arbitration Commission (CMAC) held a Directors' meeting, discussing the issues for arbitrator election. The new "List of arbitrators" at CIETAC and CMAC will be officially implemented on May 1<sup>st</sup>.

➤ March 28<sup>th</sup> - 29<sup>th</sup> 2008: Forum of Mediation Center in International Lawyers' Federation was held in Milan, Italy. Famous mediation bodies from 19 countries, including CIETAC and the members of ADR Center participated in the forum, and discussed the issues regarding procedures and applications of dispute resolution with the combination of mediation and arbitration.

➤ April 3<sup>rd</sup>, 2008: BAC held "Symposium on Stock & Bond Arbitration" co-hosted with Department of Legal Affairs, China Securities Regulation.. The principals of many industry associations and companies attended the conference, including China Futures Association, Securities Association of China, China International Capital Corporation Limited (CICC) and Citic Securities Co., Ltd (CITI).

➤ April 9<sup>th</sup>, 2008: Annual Straus Institute Council of Distinguished Advisors at Pepperdine Law School is hold in Malibu, Los Angeles. Madam Wang Hongsong attended this annual as a senior consultant. Professor Thomas Stipanowich, dean of research center, introduced the international video-conference co-hosted with BAC on 30 Oct. 2007, "Dispute Review Board" training

held in BAC on March 2008 and mediator training activities cooperated with BAC.

➤ April 10<sup>th</sup>, 2008: The Straus Institute held a seminar on "Negotiation, Mediation and Dispute Management: The Development of Global Society". About 100 senior arbitrators, mediators and industry personnel on the field of dispute resolution attended this conference, including vice president of Pepperdine University, members of senior consultants of Straus Institute for Dispute Resolution, and presidents, general law consultants and core members in Board of Director of American two large mediation organizations JAMS and CPR. Madam Wang Hongsong, Secretary-General of BAC, introduced the content and features of BAC's mediation rules, and the situation of the mediation training and feedback.

➤ April 14<sup>th</sup>, 2008: Seminar on International Business Arbitration is held in Xiamen. Almost 100 top-level experts from America, Singapore and China discussed international business arbitration. Richard Naimark, senior vice president of AAA and chairman of ICDR, and Professor Wu Yucheng, executive vice chairman of Singapore international arbitration center and chairman of SCMA gave speeches respectively (from [www.china-arbitration.com](http://www.china-arbitration.com)).

➤ April 15<sup>th</sup>, 2008: Madam Wang Hongsong, Secretary General of BAC, met Madam Gabrielle Kaufmann-Kohler, professor of University of Geneva, Swiss and famous arbitrator, Mr. Eric Biesel, Dean of the Mediation Dept. of Geneva Business Service Industry Association and other Swiss arbitrators. Both parties exchanged views on issues of concern and showed the idea of further cooperation in future.



➤ April 15<sup>th</sup>, 2008: Officials of the United States Embassy in China came to visit and communicate. The American arbitration and dispute resolution expert delegation included 16 experts, and was met by Jiang Ping, Dean of BAC. Zhang Yuejiao, Wei Yaorong, Li Hongji and other arbitrators of BAC met with the experts regarding the development situation of Chinese arbitration, mediation and ADR.

➤ April 16<sup>th</sup>, 2008. The 7th Arbitrator Training Class in School of Law, Tsinghua University started to recruit students, with a deadline of 20 May 2008. The training applied a fire-new teaching mode according to the feedback and experience of former 6 trainings, to emphasize on and cultivate the students' practical skills and mediation skills advancing mediation procedures. Please visit the website of BAC or School of Law, Tsinghua University for more details (<http://www.bjac.org.cn/arbitrator/wuqi.htm>).

➤ April 18<sup>th</sup>, 2008: Madam Wang Hongsong, Secretary-General of BAC, attended a seminar on "Business Disputes in Today's China" held in Stockholm, Sweden on 18 April 2008, and gave a speech on the BAC's newly-revised "Arbitration Rules" and newly-implemented "Mediation Rules," which deepened the participants' understanding of Chinese arbitration. Participants included arbitrators, and lawyers from Sweden and other countries in Europe.

➤ April 22<sup>nd</sup>, 2008: Madam Wang Hongsong, Secretary General of BAC, received a visit from Professor Sergey, senior professor at Russian Ural State Law Academy. Professor Sergey is a famous expert on civil and commercial law in Russia, dean of Russian Law Academy and arbitrator in Russian Ekaterina Arbitration Institute. Both parties were deep in conversation on a series of problems such as resolving the commercial disputes between Russian and Chinese parties

through arbitration and recommending experienced senior international business arbitrators to each other among arbitration institutes.

➤ April 24<sup>th</sup>, 2008: The BAC held its 4th (41st in total) 2008 Arbitrator Salon in the international conference hall. Leading the seminar was Madam Wang Hongsong, Secretary-General of BAC, who gave a speech on "The BAC's Mediation Rules" and notice of communicating with arbitrators about case trials.

➤ April 27<sup>th</sup>, 2008: Madam Wang Hongsong, Secretary-General of BAC, was invited to attend "Judicial Training Development Forum" held by School of Law, Tsinghua University.

(Zhang Haoliang, Jiang Lili, Kong Yuan and Ding Jianyong)