At the 2008 Annual Conference of the European Air Law Association (EALA) in Prague John Balfour presented an account of “Twenty years of Community air law”. Those who have attended this memorable session will agree that this was certainly one of the most remarkable highlights in the series of Annual Conferences held by EALA in early November every year since 1989. The appreciation of the delegates was given clear expression by the unusually long and warm applause after John had ended. In his presentation he had succeeded to describe succinctly the development of Community law in the air transport sector in its entirety. That he was able to do that – in 30 minutes – shows his paramount and matchless breadth and depth of knowledge in this field.

But John's expertise goes well beyond Community air law and includes aircraft finance and registration as well. Therefore it appears appropriate to deal with aircraft registration issues on this occasion. The issues addressed in this article have arisen in the author's aircraft finance practice in Germany and remain challenges to date. They show that aircraft registration, which seems to be a merely technical process, is of enormous practical significance and can raise complex questions of international law.

1. Sale and deregistration of a German aircraft

In this case a German bank had financed the purchase of an aircraft by one of its customers (borrower) through a loan secured by a mortgage in favour of the bank. The aircraft was registered in the German Aircraft Register and the mortgage was duly

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2 Luftfahrzeugrolle.
recorded on the German Aircraft Mortgage Register.3 For some time the borrower met its payment obligations under the loan agreement. However one day the bank was notified by the Braunschweig local court (Amtsgericht Braunschweig) which maintains the German Aircraft Mortgage Register that the aircraft had been deregistered from the German Aircraft Register. The German Aircraft Register is maintained by the German LBA (Luftfahrtbundesamt, the Federal Aviation Agency). It is separate from the German Aircraft Mortgage Register.

The aircraft was deregistered without the consent or even knowledge of the bank despite the fact that the bank was the mortgagee of a first priority mortgage in a sizeable amount duly recorded with the German Aircraft Mortgage Register.

When the bank inquired with the LBA, the LBA confirmed the deregistration (upon the owner's/borrower's application) and commented that it is not required to check whether there are any unsatisfied mortgages over an aircraft when it is (sold and) deregistered. The LBA also pointed out that the registration certificate contains a reference to the possibility of mortgages recorded in the Aircraft Mortgage Register. The LBA did not require any certificate from the Aircraft Mortgage Register before deregistering the aircraft. Because of economic problems the borrower then discontinued its payments to the bank under the loan agreement.

The aircraft had been sold to a buyer in Bulgaria. In the purchase agreement the seller represented that the aircraft was not subject to a mortgage or any other encumbrance. The aircraft was re-registered in the Bulgarian aircraft register. When the Bulgarian registration authority was informed that the aircraft is still subject to a valid mortgage, the authority replied that it had been supplied with the deregistration confirmation issued by the LBA and that this is sufficient for registering the aircraft in Bulgaria.

Bulgaria has not ratified the Convention on the International Recognition of Rights in Aircraft, also referred to as the Geneva Convention 1948. Therefore it is questionable whether a mortgagee in such a case will be able to exercise its rights in Bulgaria. Neither Germany nor Bulgaria has ratified the Convention on International Interests in Mobile Equipment (the Cape Town Convention) and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment (the Aircraft Protocol).

As a consequence the following questions arose:

– What are the requirements for deregistering an aircraft registered in Germany subject to a mortgage registered in the German Aircraft Mortgage Register if the aircraft is being sold to a buyer in a foreign country, particularly if the foreign country has not ratified the Geneva Convention 1948?
– What are the risks for mortgagees of aircraft registered in Germany in case of a sale of such aircraft to a foreign country, particularly with respect to those countries that have not ratified the Geneva Convention 1948?

3 Luftfahrzeugpfandrechtsregister.